SENATE—*Thursday, July 28, 1994*

(Legislative day of Wednesday, July 20, 1994)

The Senate met at 8:30 a.m., on the expiration of the recess, and was called to order by the Honorable JOHN B. BREAUX, a Senator from the State of Louisiana.

PRAYER

The Reverend Dr. Scott Jones, Howe Methodist Church, Howe, TX, offered the following prayer:

Let us pray:

Almighty and everlasting God, ruler of all nations, guardian of all who seek justice and resist evil, giver of every good and perfect gift, source of all knowledge and wisdom, we pray today for all the Members of this body, the U.S. Senate, for all its staff and officials, and for all who help in its deliberations. We seek Your help in guiding what they think, say and do.

First, help them to seek the genuine good of all the citizens of our country. Help them to put aside personal gain, group advantages and narrow party agendas, and to seek only what is true and right and good for our Nation as a whole.

Second, we seek the gift of wisdom for those who govern this Nation. Help them to discern Your will and to find the best means of fostering true peace and true justice throughout the world.

Third, we ask for integrity and courage. In the midst of the many temptations common to human beings and especially strong at the seats of temporal power, we ask that You would support each Member and staff person of this body at the highest levels of personal honesty, individual courage, and moral rectitude. Where temptations are strongest, Lord, there give the greatest measure of ethical strength. We acknowledge You as the final judge of all human actions, and pray Your blessing on what will happen here today, and every day.

Through Jesus Christ our Lord. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 28, 1994.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN B. BREAUX, a Senator from the State of Louisiana, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. BREAUX thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10:30 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

Under the previous order, the Senator from Florida [Mr. GRAHAM] is now recognized to speak for up to 30 minutes. The Chair recognizes the Senator from Florida [Mr. GRAHAM].

HEALTH CARE REFORM

Mr. GRAHAM. Mr. President, at this point in the national debate over health care reform at least a half a dozen plans have come to the forefront. All of these seem now to have obtained negative majorities. But they all have a common and I believe a flawed premise. It is that the road to national health reform is a single, national, one-plan-fits-all model. This path has taken a number of forms: managed competition, single payer, employer or individual mandate, pay or play, Medicare expansion, market reform. The path has been trampled by detail and controversy over the means, the means that supporters will use. This trampling has almost buried the broad agreement on the necessity of achieving universal coverage and cost containment.

There is, Mr. President, however, a second path, a path which to date has been almost ignored. It is a decentralized structure based on the principles of federalism in which the Federal Government establishes fundamental objectives and the States provide the specifics. In such a system, the Federal Government would establish nationally agreed upon health care performance objectives, standards, and goals, while giving to the States and communities the ability to develop localized tactics to achieve those standards. Such a structure would bring the decisionmaking processes down to the State and local levels where the arrangements for health care are all very different.

Although several plans refer tangentially to a State law, national reform should establish a Federal-State partnership as a central principle rather than an afterthought.

Let me repeat, Mr. President. National reform should establish a Federal-State partnership as a central principle rather than as an aside.

The National Academy of Sciences Institute of Medicine notes:

> States are the principal governmental entity responsible for protecting the public's health in the United States. They conduct a wide range of activities in health. State health agencies collect and analyze information, conduct inspections, plan, set policies and standards, carry out national and State mandates, manage and oversee environmental, educational and personal health services, and assure access to health care for underserved residents. They are involved in resource development. They respond to health hazards and crises.

Mr. President, health care is particularly suitable to the establishment of national goals with decentralized implementation and sensitivity to local culture, geography, and institutional variations. States and communities within States have different health care needs based on societal factors such as the quantity and nature of health care providers. For example, Nebraska, North Dakota, and South Dakota have twice the number of hospital beds per person as Alaska, New Hampshire, and Hawaii; varying demographics, especially for the most health intensive populations. For example, as a percentage of State population, Florida, Pennsylvania, Iowa, Rhode Island, and West Virginia have 50 percent more elderly than do Alaska, Utah, Colorado, and Georgia; current levels of insurance coverage. In Nevada, Oklahoma, Louisiana, Texas, and Florida, approximately one-quarter of the population under 65 is uninsured. However, in Hawaii, Connecticut, and Minnesota, less than one-tenth is uninsured.

Clearly, different State circumstances will require differing solutions and timeframes. For example, what would work in rural areas will not work in urban areas. The means of achieving universal coverage and access are undoubtedly different in Florida than in Wyoming. Even within rural areas, the health care concerns of those along the rural sections of the United States-Mexico border are vastly different than the needs of ranchers in Montana.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

A successful plan would have to accommodate the broad diversity of this Nation. Yale Professors Theodore Mashaw and Jerry Marmor stated in a July 7, 1994, Los Angeles Times editorial:

Given the diversity of States, their varied experience with health care, and intense local preferences, why enact a single brand of national health care reform, especially if it is the poorly considered compromises that we seem to be headed toward. By moving compromise in the direction of preserving goals rather than defining means, we can allow States the further thought and experimentation that are needed for effective implementation.

Mr. President, presently, there is insufficient field-based experience and consensus to commit the Nation to a single health care monitor. No State—not Hawaii nor California—has had an adequately extensive or sustained experience with a managed care model for all. There is not an empirical base of experience suggesting that such a model should be the centerpiece of a national health care reform.

Unfortunately, it is largely the Federal Government's failure to provide waivers to Medicaid, Medicare, and the Employee Retirement Income Security Act [ERISA] which has limited States' creativity for many years. In the mid-1980's, while I was Governor, Florida was unsuccessful in an attempt to receive a waiver from the Federal Government for a Medicaid buy-in program from the Reagan administration. Florida's current Governor, Lawton Chiles, was in Washington a few weeks ago pushing again for a Federal waiver that will provide 1.1 million uninsured Floridians with health insurance. He has been met with foot-dragging and hohumming from the Health Care Financing Administration. Why has there been such a long consistent pattern of Federal reticence to approve innovation and creativity at the State level?

A New York Times article dated June 12, 1994, may provide an explanation. According to the article, in a June 1993 memorandum, Health Care Financing Administrator, Bruce Flatic warned: "The waiver authority could become a way of relaxing statutory or regulatory provisions considered onerous by the States."

He went on to add that "waivers will be used to slow down nationwide reform."

After 6 month's effort by Governor Chiles, the waiver which he has requested to allow the State, at no additional cost, to provide insurance for the near poor, the working poor, this waiver is still not forthcoming.

The same arguments were made in 1974 when Hawaii passed its comprehensive health reform bill. There was the belief that it was unnecessary because there would soon be national comprehensive reform, and that Hawaii's bold initiative would frustrate national efforts. Instead, Hawaii and other States have become models for health care reform.

In addition, the Federal Government's administrative agencies are not prepared or capable of accepting the mammoth new responsibilities inherent in any unitary program for health care system reform. Medicare's dismal performance in monitoring fraud—a $15 to $20 billion annual hemorrhage by some informed estimates—is a harbinger of what a unitary system could inflict upon a nation: a train wreck with all Americans aboard.

I further add that Congress has not been successful in recent years in confronting major complex public problems. The savings and loan debacle, the 1986 Tax Act, and catastrophic health care, are all examples of how Congress has a greater interest in getting a bill passed than in truly solving problems. We may be at the point in this debate where certain compromised positions will sacrifice effectiveness and reform for a rose garden ceremony. The politically doable is not necessarily equal to the pragmatically desirable.

Earlier this week, I sat at a chair in the Chamber and listened to one of the proposals being described by its advocate. The Senator argued for a plan, in part, because it was the result of a series of compromises on contentious components of reform. As I listened to the compromise being described as a virtue, I analogized this to two aviation engineers who could not decide on a wingspan of an airplane. One says the wingspan should be 100 feet. The other says the wingspan should be 150 feet. So they compromise, with disastrous results. They build a plane with one 50-foot wing and one 75-foot wing. Both engineers are happy, but the plane crashes and burns.

Unlike the engineers, Congress must come up with a design that works and not one that compromises principles and threatens the health of all of its passengers.

The unitary path to reform will likely result in an ineffective amalgamation of compromises or a highly partisan and closely divided final product. The Nation would be ill-served by either result. A narrowly based and unworkable program passed this year would sow the seeds for continued destructive sniping and controversy in the years ahead, and lead to an accelerated erosion of public confidence in the Federal Government.

We cannot repeat the legislative failures of the 1980's. The savings and loan debacle cost us between $150 and $300 billion. It was a significant factor in the most serious recession since the 1930's. A health care debacle would put millions of Americans at risk, damage the world's highest quality health care delivery system and, if medical inflation continues, contribute to record deficits by the end of this decade.

Mr. President, there is a second path. That path is a Federal-State partnership toward reform. This Jeffersonian model is one that has been utilized time and time again. In fact, the interstate banking bill which just passed by the conference committees this week provides for an interstate banking system with national standards and underlines State flexibility to recognize the diversity of communities across the Nation.

Further, when it comes to health reform, States have significant experience, success, and track records they, in fact, have achieved more in the way of reform than Congress has. In the summer of 1993 issue of Health Affairs documents successes at the State level and health reform from Florida, Hawaii, Maryland, Minnesota, Oregon, and Washington. Significantly, these States have adopted reforms that differ in terms of scope, anticipated outcomes, and process.

These variations reflect diverse needs, ideology, and stages of health care evolution in each State. So should national reform. Moving health reform to the States and closer to the people should be a central principle of a national health plan. Only then will we have real accountability and responsiveness to the needs of citizens, business, and providers. Only then are we likely to have a reform which will actually deliver its promise of sustained and straightforward accessibility to high-quality, affordable health care for all Americans.

Mr. President, we might ask how would this second path—a path which had as a central principle a Federal-State partnership—be accomplished? Let me suggest, first, that the Federal Government should establish Federal standards in those areas where uniformity is required and agreed upon. Standards that the Federal Government should set would include universal coverage, cost containment, the composition of a standard benefits package, insurance reform on issues such as community rating, portability, guaranteed issuance, and a State-based public authority to assure implementation and be accountable for these goals.

Certainly, these are goals on which the Congress, the President, the States, and the American people can come to some agreement. However, the Federal Government should separate the ends and goals of health care from the means of health reform. The Federal Government should establish agreed-upon performance objectives to attain these 5 goals. However, for both political and policy reasons, the Federal Government should not impose the detailed means by which the States must achieve the performance objectives. Rather, the Federal Government should set forth performance standards which are achievable and will provide adequate and equitable financial assistance to States for implementation, and then hold States accountable for results.

The fundamental question determining the Federal role in health care implementation should be this: Does the particular proposal under consideration require uniformity in process or procedure to achieve national goals? To repeat, Mr. President, the question which should be asked of every proposal, organization—financial, or regulatory—should be this: Does the particular proposal under consideration require uniformity in process or procedure to achieve the national goal?

There are a set of limited circumstances which, in my opinion, meet this test. These would include Medicare, special populations—such as immigrants—which impose disproportionate impacts on States and local communities, and national tax policy which creates various health care incentives.

The need for national uniformity might also include the special treatment of interstate corporations similar to that now received under ERISA. However, for the vast number of issues, the answer is clearly no. National uniformity is not required to achieve the goal of universal coverage.

For example, to achieve universal coverage in cost containment, States could implement a system resembling Hawaii; States could implement the Clinton administration plan; States could administer national competition without mandatory alliance. They could administer a single-payer system, an all-payer regulation, or a combination of these proposals. Each of these means to accomplish the end has the capability of achieving the goals of universal coverage and cost containment.

To attain the nationally established goals, the Federal Government should make funding available to States in the form of a block grant based on factors such as poverty, State income, other demographics, and health care costs.

The Federal Government should utilize funding to provide rewards to States that move more quickly toward the goals of national reform—guaranteed funding, so long as States continue to move toward those goals—and possibly even impose sanctions on the States failing to meet the goal.

States should choose how to finance their share of the cost of health reform by virtually any means which they find most appropriate to their State. Beyond that, the Federal Government should only provide direction, and get out of the way of State reform. In fact, the States should be allowed to supplement the Federal standards benefits if they so choose, but with their own non-Federal funds. In a decentralized or Federal system, States would have the responsibility to establish and implement programs to achieve national standards.

Among other things, States should have the flexibility in following, or States should be granted the flexibility to establish, the health delivery arrangement that best meets the geographic considerations and needs of its population.

Financing: States should be responsible for any costs beyond that established as the basis of Federal block grant funding. Therefore, States will have a strong incentive to initiate effective cost containment systems whether by use of market forces, a regulated payment system, or a mix of both. In regulation, States have historically, and should continue to be, primarily involved in the training and licensure of health care providers, and have been responsible for the civil justice system, and, thus, medical malpractice reform.

However, States such as Hawaii, Washington, Florida, Minnesota, and Oregon could maintain and build on the successful and popular health care reforms which they already have in place. How do we get there? How do we walk this second road of a partnership of the Federal Government and the States for health care reform?

What is needed, Mr. President, is to convert the various unitary plans which combine both ends and means in a centralized Federal Government approach. We need a plan to convert those various unitary plans from explicit health care road maps to statements of destination.

Due to the late hour of this debate, Congress should look at the objectives of the various plans and pick the proposal that best meets mutually agreed upon goals. Which of the half dozen or more plans before us will in fact give us the greatest confidence that they will achieve the objectives of universal coverage, cost containment, insurance reform, and the other goals which have been stated?

The underlying organizational, financing and regulatory details would only be a temple for States. That would be applicable in the absence of a State's enactment of its own reform structure, or in the wake of a failed State plan. In short, the Federal temple would only serve as a safety net for States. States could opt out of any national design as long as they could demonstrate that they could meet the Federally established standards that we agree upon.

Mr. President, this strategy is not original. In the President's Health Security Act, States were given the option of adopting a single payer in lieu of the purchase of private insurance through mandatory options. If States decline to use the single-payer option, they would be included in the national system.

My proposal suggests a similar foundation of a national system but with a broader range of options to the States. Provided States meet the tests of achieving universal coverage, with guaranteed and affordable comprehensive benefits, they could choose from a variety of financing organization and regulatory arrangements.

Mr. President, in the last election Americans made it clear that health care reform is of primary importance to the Nation. Health care reform is necessary not only to the 38.5 million uninsured Americans, but also for the health of the economy and the health of the rest of America.

Congress is trying to respond. But at this point it appears that there will be one of two results: We will either fail to enact health care reform due to the partisan bickering, or we will pass a compromise that will not work, will detract from true reform, including stifling reform efforts at the State and local levels, and further diminish the public's confidence in the Federal Government.

Mr. President, we badly need—this Nation, our people and our future—a sustained success in health care reform. The well trod road of federalism is that path.

Mr. President, I ask unanimous consent to submit for the RECORD various materials referred to in my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From Domestic Affairs, Winter 1993-94]

TAKING FEDERALISM SERIOUSLY: THE CASE FOR STATE-LED HEALTH CARE REFORM

(By Jerry L. Mashaw)

It is a good time to take stock of the debate about health care reform. There are nearly as many divergent ideas about the desirable specifics of reform as there are analysts who believe that the system is broken and must be fixed. This much is clear: A country that spends more of its gross domestic product on health care than any other country in the world, yet still fails to provide reasonable assurance of coverage to a substantial, and increasing, proportion of its population, is not doing a good job. We do need reform. What should it be?[1]

The major proposed directions for reform are now reasonably familiar to those who have been following the debate. But as partisans of one reform strategy or another have battled for attention and adherents, some simple facts have often been obscured. The good news is that there is merit to most of the proposals that have been put forward. The bad news is that no one of them is without serious flaws or uncertainties. This combination of good and bad news provides a persuasive argument for national health care reform that leaves great scope for state flexibility in the design of health care systems.

That is the simple message of this article. But to unpack the argument a bit, we must first take a brief look at the pros and cons of the major proposals. We will then see why state planning makes sense and discuss how to avoid some of the potential pitfalls of what I will call a federalist approach.

ON THE ONE HAND, ON THE OTHER HAND

So much attention has been focused on the Clinton administration's deliberations and

Footnotes at end of article.

reform strategy that we have virtually forgotten the multitude of plans that were being put forward in the last two years of the Bush administration and that are still supported, in various forms, by many important actors and interests. Roughly speaking, these plans can be grouped under four headings: (1) so-called play-or-pay proposals, (2) the Bush voucher plan, (3) single-payer or Canadian-style arrangements, and (4) managed competition.

Play or pay is an attempt to build directly on the current system of employer-based health insurance. Employers would either provide insurance for their employees or pay into a common pool that would in turn provide that insurance. In short, play or pay is an employer mandate system that would attempt to arrest the rapid unraveling of employer-based insurance that now leaves as many as 60 million Americans without insurance at some point each year. It is, indeed, the decline in the percentage of employed persons who have health insurance through their workplace—not unemployment or a decline in support for public programs—that has resulted in a smaller percentage of all Americans being covered now than in 1980.

Play or pay has the advantage of building on the current system, but its disadvantages are many. Mandates are often perverse forms of taxation with undesirable economic effects. Small employers, who can least afford hefty benefits packages and who are collectively the greatest source of job creation, often bear the largest burdens. Moreover, because benefits in a play-or-pay would remain tied to employment, the "portability problem"—the inability to change jobs without losing or impairing insurance coverage—could be solved only by further mandates or regulations. Finally, play or pay, in and of itself, would do nothing about the unemployed, who would have to be insured through a separate fund.

This last issue points to a substantial risk inherent in all play-or-pay schemes. There is a danger that highly paid workers, who are already well-insured and who tend to have lower health risks, would end up with generous packages of employer-based insurance, while lower-paid-workers, who generally have poorer health status and are more costly to insure, would be in a public system that over time would become increasingly costly. The response to that system's rising costs would likely be belt-tightening for the less affluent—that is, less and less adequate coverage for them.

This sort of two-tiered medicine is not what most people have in mind when they speak of universal health insurance. After all, we have a similar situation now, with a lower tier that is increasingly vulnerable to political demands for cutbacks in government spending. The more of us who are included in essentially the same system, the more likely that system will be to provide high-quality treatment and low levels of administrative hassle for everyone.

Play-or-pay proposals also tend to leave much of the administrative complexity and cost of the current health care system intact. Moreover, although it is not impossible to address the various drawbacks of these proposals, the solutions themselves would generate new complications.

Finally, there is no necessary link between play-or-pay reform and cost containment. Reduction in the inflation rate for medical care would have to be achieved through some other regulatory mechanism, which could prove very intrusive—and at precisely the point where most Americans would least like regulation: the point of service delivery.

Politically, play or pay was developed as a path of least resistance. It is an approach built around existing institutions and the anticipated political barriers to doing anything else. Such a strategy could be politically astute in the short run, but it would give us a Rube Goldberg design for health care reform—a design that in the long run could function very badly.

To compete with the play-or-pay plans proposed by Democratic leaders in Congress, the Bush administration developed a different and conceptually much simpler system. Universal coverage would be encouraged by a tax credit or voucher, the value of which would be inversely correlated with family income. Vouchers could be transferred to employers for participation in an employment-based insurance plan or used directly to purchase health coverage. The proposal may have been intended to be the entering wedge for a reform strategy based on an individual mandate, as described by Michael Graetz elsewhere in this issue. And as Graetz's article points out, there is much to be said for an individual mandate approach. Our current scheme of tax-deductibility for employer contributions to health insurance, combined with the exclusion of the value of those contributions from taxable individual income, is a remarkably regressive system of public support for health insurance.

The Bush voucher plan, however, had the defects of its virtues. First, although it would have increased the proportion of the population with health insurance, it did not propose to make coverage universal. Second, the credit-voucher approach would have left some Americans, whatever their expected health risks, with only the insurance that they could buy with their limited subsidies. Others would have remained free—and financially able—to purchase more and better coverage. The predictable result would have been an extreme form of two-tiering. Third, the plan's mechanisms for subvention—sliding-scale credits for the poor and tax deductions for the well-off—would have afforded little relief from the increasingly fantastic costs of insurance to members of the working lower-middle class.

Fourth, there was no obvious cost control mechanism in the Bush proposal, although caps on tax deductibility under employer-based plans could have been added later and cost control was being built into the benefits package through the unfortunate stratagem of cutting back on what most Americans view as adequate coverage. This means of cost control would be likely to exacerbate the extent of tiering as well as the administrative costs and "system gaming" that always accompany attempts to restrict the scope of coverage of any health insurance program. The result over time might well be little or no cost containment

Finally, because the Bush proposals relied on the current insurance system—with its marketing costs, duplications of coverage, and massive administrative bureaucracy—there was little hope that the credit-voucher approach, as proposed, would have significantly affected the absurd ratios of administrative to service-provision expenses in American health care. There may have been a managed competition sleeper in the Bush plan's "Health Insurance Networks" that would have lessened administrative costs, but the proposal did not emphasize this feature. And any savings from this portion of the plan might have been swamped by the costs of the new administrative complexities inherent in means-tested vouchers and deductions.

Meanwhile, a number of senators and congressmen were pushing a quite different alternative: single-payer or Canadian-style reform, a proposal that is far from dead either in the Congress or outside it. The single-payer approach is elegant in its simplicity. All Americans would be covered for all necessary medical expenses. The "government"—probably, in truth, state governments (just as provinces play this role in the Canadian system)—would be the "buyer" of all health care goods and services. Each year, a state would negotiate with providers for an overall budget limit on expenditures, along with a specific schedule of payments for particular procedures. If the budget were overrun in one year, the amounts paid for various procedures would be cut back in the next. The specific amounts to be paid for particular medical services would be hashed out primarily in the medical fraternity—that is, doctors and hospitals would, by negotiating with each other and the government, determine how much of the overall and limited health care pie each would consumer.

For consumers or patients, this system is almost too good to be true. Each patient would have a card entitling him or her to health care as needed—that is when that need was certified by a licensed professional. There would be no limits on choice of doctors or hospitals; doctors and hospitals would not be allowed to charge more than the prices previously negotiated with the government; and private insurance would be available only for those limited services not covered by the national scheme (e.g., cosmetic surgery).

As the Canadians like to put it, a system of this sort is universal (everyone is in the same boat), portable (not tied to either a particular job or place of residence), accountable (public authorities bargain for the populace concerning benefits and their costs), and fiscally prudent (monopsony bargaining by a single payer produces the power to constrain costs, and the necessity to provide other goods and services motivates the government to constrain its health care budget). Administrative complexities are kept to a minimum. Multiple insurance policies, balance billing, experience rating, and pre-clearance for access to tests or care ("managed care") are all unnecessary. While administrative costs are shaved and provider incomes are constrained, choices about how to practice medicine are guided only by professional judgments and patient choices.

For the United States, the difficulties with this system are primarily ideological and political. The first problem is the specter of "big government." In a single-payer system, virtually all of the health care dollars that now run through the private economy would run through the government budget. Experience in Canada and elsewhere should lead us to expect a decline over time in the now-relentless rate of increase in the share of our GDP devoted to health care costs. Nevertheless, the prospect of a one-time shift of vast resources—amounting to 8 to 10 percent of GDP—from private accounts to public accounts has led many to believe that a single-payer approach would be ideologically unacceptable to the American populace. (Opinion polls do not necessarily support this claim.)

A second major problem is that single-payer reform would decimate the private insurance industry. If we had to choose a part of the American health care system to decimate—the choices being providers, patients, or insurers—this would surely be my choice. Nevertheless, putting this industry out of

business—except in niches or to the extent that it administers portions of a single-payer apparatus—is thought by many to be politically nonviable. A large number of jobs are at stake here, even if they are in some sense make-work, in that they involved carrying out administrative tasks that a single-payer system would render unnecessary.

There are also worries about queues, fed largely by anecdotes that seriously misrepresent the true picture in Canada and elsewhere. In addition, some have suggested that government finance would stifle the continuous march of technological progress in American medicine—a fear that seems to be groundless as well. Yet, taken together, these various concerns, however mistaken or exaggerated, may be sufficient to make the single-payer approach politically nonviable as a national solution.

At this point enter (stage center) "managed competition." While oxymoronic in its nomenclature, managed competition captured the imagination of the Clinton administration and apparently provides the backbone of its plan. The basic notion of managed competition is the formation of purchasing cooperatives that would provide insurance for the whole population and that, because there would be only one in each local market, would have the bargaining power to force down provider prices.

Universalism can be built into a managed competition proposal in any number of ways, ranging from allowing employers to buy coverage for their employees from the health insurance cooperatives (and setting up a governmental program for those who are unemployed) to establishing a voucher system reminiscent of the Bush plan. Managed competition strategies typically would preclude insurers from experience-rating populations (that is, charging premiums in relation to the relative risks of particular groups) or denying individuals coverage because of their preexisting conditions.

The advantages of managed competition are said to derive from its use of monopsony power (as in a single-payer scheme) to control costs and from its reliance on the competitive provision of services as a mechanism to protect the quality of care and patient choice. Thus, the ideological baggage of managed competition—unlike that carried by the single-payer approach—all seems positive: "market," "choice," and "competition."

However, the problems with managed competition are many. It would rely very heavily on reorganizing the practice of medicine into health maintenance organizations (HMOs) or preferred provider organizations (PPOs). Groups of physicians and hospitals would agree to treat populations of patients for fixed annual fees. In essence, the providers would become the insurers in this system—and would make money only to the extent that they became efficient in managing the care of their patient populations.

A logical corollary of this arrangement is that patients would have less choice about who provides them with medical care and physicians themselves would have less professional autonomy. The superficial ideological attractiveness of managed competition may vanish as both patients and physicians learn more about what managed competition really means. In addition, because managed competition has never been tried anywhere on a substantial scale, it would entail the acceptance of these losses of autonomy for patients and physicians in exchange for an unknown degree of cost containment.

These disadvantages may not be so dire as they sound when stated abstractly. There are many successful HMOs with satisfied customers. Moreover, few of us do much real choosing of our doctors anyway. We may select a general practitioner or internist (if we find one), but a huge proportion of acute care is now provided by specialists or sub-specialists to whom we are referred and about whom we know little. The use of large cooperative purchasers would cut down on administrative expenses and could be designed to assure virtually unlimited portability of benefits, although with some administrative stress.

There are many variations on these four themes and perhaps some approaches that are not captured very well by the typology that has been employed here. Moreover, systems can sometimes be fused. Play or pay and managed competition have much overlapping content and can be brought even closer together or made more distinct by technical design features that go beyond the scope of this discussion. For present purposes, the basic point would be clear enough: There are lots of proposals out there, and each has strengths and weaknesses.

WHY CHOOSE?

Although the discussion in the last section was couched mostly in policy-analytic terms, we should not be misled into believing that deciding how to reorganize American health care delivery and finance is just a matter of resolving technical issues. These choices are highly political. To put the matter slightly differently, because there are substantial uncertainties about how any proposed system would work and because each has different risks and benefits, choosing a plan involves ascertaining what risks people think are worth running for what potential gains. Moreover, there are basic moral and political questions about how egalitarian and comprehensive health care should be and about who should have the authority to make what sorts of choices regarding health care facing what incentives or constraints. Answers to these sorts of questions are the essence of political judgment.

It is precisely here that the basic structure of our federal system can play a crucial role in making health care reform viable, successful, and acceptable to all Americans. Political judgments concerning the desirability of the reform directions we have been discussing are products of personal experience, local economic and social conditions, and political ideology. These factors change substantially as one moves about the United States. If change is to be workable and acceptable, it must take account of the real differences between New York and Idaho, Wisconsin and Louisiana.

For example, because of their long experience and heavy involvement with HMOs, Californians may be perfectly happy with some version of managed competition. Vermonters, by contrast, may find the idea of an HMO appalling and the notion of competition among large health insurance cooperatives laughable given the small size and sparse population of their state. Maryland may prefer an all-payer rate-setting system for cost control, in no small part because it has had significant success over the last decade constraining hospital costs by using that approach. The governor of Kentucky has worked out a complex and comprehensive version of play or pay that might well suit Kentuckians and their particular circumstances.

And so it goes. There is unlikely to be any single best system for the whole of these United States. Regions, states, even localities are different in their demographic characteristics, political cultures, and existing styles of medical practice and health care consumption.

Why not then let states choose how to reform American health care? If it is uncertain how any new proposal would work out in practice, why run a single experiment, which might fail, on the whole country at once? Is it not precisely the genius of American federalism to permit not only experimentation to discover what works, but continuous variation in policy prescriptions over time to accommodate different conditions and different preferences?

My answer to these questions is yes. But I must recognize that there are serious and plausible objections to leaving much of health care planning to the states. In the next section, I will consider some of the major concerns about a federalist approach to reform.

ARGUMENTS AGAINST THE STATES

I do not propose here to consider every conceivable objection to a major role for the states in health care reform, but I do want to describe—and, frankly, dispel—some of the most important. My view is that the problems addressed here, though real, are not so serious that they should cause us to prefer a nationalist to a federalist approach to reform.

First, it is objected that "letting the states do it" would mean that health care would be different, and potentially less "good" (comprehensive, universal, effective, or whatever), in Mississippi and West Virginia than it is in Minnesota and New York. That is true. But it is also true of housing, schooling, access to transportation, and a host of other life-enhancing goods and services that many of us would prefer to see more evenly distributed across the national population. It is also, of course, dramatically true of our existing health care arrangements. We should not delude ourselves that the creation of a "national" plan would stamp out the large differences in the economic or other circumstances of populations across the United States.

Moreover, if, as many analysts persuasively argue, managed competition just would not work in Mississippi or Idaho or, indeed, in about half the states, putting that system in place could hardly produce a big change for the better. Similarly, if Minnesotans are ideologically opposed to means-tested vouchers while Arkansans shudder at the thought of their state government becoming the single payer that manages their health care, why choose a national system that has the potential to make these populations worse off than they currently are? Uniformity is in fact a pipedream, and, as the fictious Mr. Sherlock Holmes discovered, indulging in a large number of those dreams can be detrimental to your health.

What then about the capacities of the states, both administrative and political? Can we really trust the states to adopt and implement reforms that universalize coverage, make it portable for their populations, constrain costs, and maintain quality? We might readily ask those same questions about the national government. And we already know the answers with respect to the current system of private provision. It fails all sensible tests for a good health care system.

But we need not rely entirely on "as compared to what" arguments. For one thing, a federalist approach does not eschew national standards, as we shall shortly discuss. Of equal importance, a number of states have been actively engaged in health care reform

efforts of their own, and many are having significant successes—against, as we shall see, very steep odds.

Hawaii is perhaps the best known example. That State has developed an extraordinary amalgam of play or pay, monopoly bargaining, voucher-type gap-filling, and single-payer regulatory control under which the whole population is covered. Quality of care and consumer satisfaction are both high, and health care costs Hawaiians, as a proportion of income, 5 percentage points less than it costs the average mainlander. There are many historical and geographical explanations for these happy circumstances in Hawaii, but none explain away a true success story in American health care provision. Moreover, the cost containment that has been achieved is startling in a state that has the second highest cost of living in the United States.

A quick trip back East will also reveal some excellent results in states such as Maryland and New York. For the past decade, both of those states have been engaged in fairly aggressive rate regulation and "supply-side" controls with respect to hospitals. Their efforts have paid off handsomely. Maryland's all-payer regulation of hospital rates is the most developed and most successful in the country, and New York's rate of growth in hospital spending is now among the lowest. Is New York well-known for low costs and good government? For that matter, is Maryland? And yet, these states, pressed hard by hospital cost escalation that increasingly showed up in their Medicaid budgets, took actions that have constrained costs without, as far as anyone can tell, impairing the quality of care provided their populations.

Many other states have initiatives at various stages of planning, enactment, and implementation (Minnesota, Delaware, Vermont, and Florida, for example). Others, such as New Jersey, have tried to strike out in new directions only to find that they are hemmed in by federal regulations related to Medicare and Medicaid—and particularly by the pre-emption, in the Employees Retirement Income Security Act (ERISA), of state actions affecting self-insuring employers. Indeed, Hawaii's signal success in universalizing care while constraining costs has much to do with its good fortune in having obtained a waiver from the ERISA preemption rule—a waiver that has not been made available to any other state in the Union.

By this point, another quite sensible query may have occurred to many readers: If the states are so good at health care provision or reform, why do we have a national health care crisis? The basic story is conceptually simple. Remember the various types of national health care reform plans that were discussed earlier. One common feature of all of these proposals is their comprehensive nature. To universalize care, make it portable, maintain quality, and constrain costs, you have to have a plan that addresses virtually all aspects of health care delivery and finance.

Under current law, this sort of comprehensive approach is unavailable to the states. Forty cents of every dollar expended on health care is spent by the federal government under rules and regulations that are not subject to state control. To be sure, some states have been able to get waivers of certain Medicaid regulations, and Maryland has managed to get, and utilize effectively, a Medicare waiver as well. But their inability to control large chunks of health care finance is only the beginning of the states' current difficulties. If it is impossible to fold self-insured employers into the system because of ERISA, as it is everywhere except in Hawaii, then states cannot build comprehensive systems. To oversimplify, but not by much, the ERISA preemption means that the people who have the lowest health risks and the highest abilities to pay will be outside of the state systems.

Equally important, a huge proportion of the federal contribution to the expense of American health care comes through the tax code. The tax deductibility of employer expenses for employee health care means that some $65 billion is dumped into the health care system annually in a form that can be maintained only if insurance or self-insurance remains employment-based. This eliminates, for all practical purposes, the potential for states to cut health care insurance loose from its historic, and accidental,[2] moorings in the workplace.

In short, the problem is not just that federal policies have failed to facilitate state solutions to problems of health care delivery and finance; it is that these policies continue to thwart state efforts at almost every turn. Nor, to be frank, has the federal government been responsible about throwing these monkey wrenches into state efforts. The ERISA barrier, which is probably the most serious, was created by a statute that preempts all state regulation while failing to provide any national regulation in its stead. Hence, while states can prevent private insurers from excluding people because of preexisting conditions and can require insurers to community rate, as the states historically have done with the Blues, ERISA prevents them from taking the same steps with respect to self-insured employers. The result has been a flight to self-insurance to avoid regulation—and then the increasingly frequent and distressing discovery by employees that their employer's health insurance can be counted on to provide good coverage only if they remain well.

I do not want to oversell this tale of state responsibility in the face of federal obstructionism. States are not responsible, or even competent, all of the time. And if large amounts of federal monies are going to be put into a national health care system, then it is surely also irresponsible for the national government to allow those monies to be spent with no federal controls or oversight.

I have no quarrel with this position, but it does not entail the conclusion that we must therefore have a national health care system that is uniform across all states and administered primarily from Washington. On the contrary, it should lead only to the conclusion that the federal government should set broad goals or parameters within which state systems are required to operate and then free the states to create those systems that work best for their populations within the constraints of the federal guidelines.

This is hardly a novel institutional structure. We use it in many realms of national domestic policy, ranging from highway construction to environmental protection to day-care. In my view, we would be well-advised to use it again in health care reform. If the federal government would continue its fiscal contribution to American health care—both direct expenditures and tax expenditures—but make maintenance of that contribution conditional upon some straightforward guidelines for state organization of health care provision and finance, we might have the best of both possible worlds: a system that satisfies national aspirations and is responsible with national monies, while it simultaneously responds to the differing conditions, cultures, and preferences of states and their populations.

In principle, these guidelines could be quite simple. A state should not receive the necessary waivers from federal statutes or the maintenance of federal fiscal contributions unless it provides or constructs a universal system that covers all reasonably necessary medical procedures. Benefits in that system should be portable both within and without the state, and there should be a public authority that can be called to account for the operation and quality of the system. The federal government's means for financing its contribution to the system should ensure that if a state's (appropriately adjusted) health care costs per capita, or its health care cost inflation rates, exceed national targets, those excess costs are to be paid 100 percent with state and private, not federal, dollars.

TROUBLE IN CAMELOT?

As does any reform plan, the federalist solution raises its own set of worrisome issues: What would be the effects of multiple and varied rules on national employers? How would the federal government enforce the conditions it sets? How would a federalist approach deal with the reality that states differ in their capacities to achieve universality and cost containment given the current differences among their health care systems on both counts and, more generally, the differences among their economic, social, and institutional situations?

As to the first question, national employers already cope with enormously diverse health care needs and systems across the country. All health care arrangements are intensely local. The claimed need for uniformity is a smoke screen for the real objectives of the big businesses who cite it: either the maintenance of the current system, which gives them some advantages over small businesses (e.g., no regulation of their health care benefits and the potential ability to avoid contribution to the cost of the uninsured) or the construction of a new set of mandates that will disadvantage their smaller competitors even further. The objection to a lack of uniformity should be ignored.

Enforcement, by contrast, is always a problem in state-federal cooperative arrangements, but the size of the problem should not be overstated. Over time, progress generally is made through threats, negotiation, and occasional sanctions. Moreover, a federal statute can easily be structured so that consumers and providers have private rights enforceable in court. The double-whammy of federal bureaucratic pressure and private litigation has a long history of enforcement success in program after program of "cooperative federalism"—though not unalloyed success, of course. Compliance is never perfect with any legal requirement in any legal system.

Differences in state capacities would have to be recognized and taken into account in federalist strategy. Most state-federal systems begin with the submission and approval of plans, move on to implementation and monitoring, and continue over time with endless rounds of negotiations, sanctions as needed, and legislative amendments. Any such system—and health care would surely be no exception—establishes a process, not a completed product. And in that process, states will perform better, worse, or just differently. No sensible federal administrator could expect otherwise.

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Doubters and skeptics among the readers of the last three paragraphs may view them as overly optimistic, perhaps even glib. And even the more sympathetic may now be thinking the equivalent of "easy to say, but tough to implement." My response for now is only this: So is everything. All reform is essentially trial and error—or more cheerfully, trial and accidental success. Social engineering is an art, not a science, and mistakes can be very costly.

To take a pessimistic view, if in reforming American health care we are currently about the business of engineering a train wreck, it would be nice not to have the whole country on the train. From a more optimistic perspective, in establishing and operating this grand new experiment, it would be helpful to be able to learn over the years from the experiences of those states where the switches work better and the trains run closer to their scheduled times.

FOOTNOTES

[1]The conclusion that the system is broken seems to generate little disagreement, although I must confess that I believe we can take the bashing of the health care system too far. An industry that grows at twice the rate of the gross domestic product, creates a huge number of high-paying, high-skilled jobs, provides the United States with technological leadership in a major economic sector, and is virtually immune from foreign competition should hardly be treated as public enemy number one.

[2]Somewhat ironically, the origin of employment-based health insurance is attributable in substantial part to employers' desires to avoid wartime wage controls.

NATIONAL HEALTH REFORM: WHERE DO WE GO FROM HERE?

(By Theodore Marmor, Jerry Mashaw, and Jon Oberlander)

I. THE PROBLEM

The debate over health care reform has reached a critical juncture. There is significant opposition in Congress to the administration's plan without consensus on an alternative. There is widespread agreement that health reform is needed but disagreement on the precise shape reform should take. Given these political circumstances, and the associated risk of deadlock, what should supporters of health reform do? How can national health reform be enacted when no majority exists for any single reform plan?

The challenge for reformers is to pursue a strategy that reflects the political consensus on the goals of health reform as well as the lack of consensus on solutions. With no clear majority for any proposal, health reform proponents are divided into factions favoring managed competition, single-payer, expanded Medicare and various hybrids of these approaches. These divisions, however, should not obscure the larger consensus among reformers on fundamental principles: universal coverage, cost containment, and radical reform of private health insurance practices.

A majority for health reform can be formed if supporters of the various reform options are aggregated around their common commitment to these principles. In other words, if a legislative proposal can be developed that brings together all those serious about health reform—be they single-payer, managed competition or whatever—a sufficient majority will be created that can overcome the resistance of health reform opponents. The trick, then, is to pursue legislation that builds on the reformers' consensus on goals while recognizing their differences on how to achieve those goals.

II. THE SOLUTION

One possible solution to the problem of forming a legislative majority amongst reformers whose health policy preferences diverge is to enact legislation requiring universal coverage, cost containment, and insurance practice reform but allowing for multiple strategies for meeting these standards.

Specifically, Congress could pass legislation mandating that the states enact universal coverage, insurance reform and cost control by a specified date but leaving the states a choice about which administrative and health delivery changes they wish to implement. To a limited extent the Clinton plan, with its single-payer option, already recognizes the advantages of state flexibility. We propose, however, to expand on the concept of state-led health reform by enlarging the scope of state discretion and making it a political cornerstone of national health reform.

How would a proposal for state-led health reform work? Congress would enact legislation mandating state compliance with federally-established national health reform standards. By a specified date, states would be required to enact universal health insurance meeting the following standards.

Universality. All citizens must be guaranteed health insurance coverage. Insurance coverage may not be denied for preexisting medical conditions. Community rating is mandated. Insurers may not sever coverage.

Comprehensiveness. Health insurance coverage must include all necessary medical services. Congress should specify a minimum benefit package which leaves states the option of adding coverage for additional services (e.g., dental care).

Portability.

Accountability. States must designate an administrative agency responsible for overseeing their health care system.

Fiscal viability. States must establish a reasonable plan for cost containment. States exceeding national targets for medical inflation will themselves be financially responsible for excess expenditures.

States would submit their proposed plans to a National Health Commission for approval. It should be noted that Congress must enact accompanying legislation (such as reform of the ERISA provisions of self-insuring companies) that allows states sufficient legal discretion to pursue health reform. States should be allowed, with federal approval, to fold Medicare and Medicaid into their health systems.

Federal funding would be available to states meeting the national health reform standards. Funding could be in the form of a block grant varying with state income, demographics, and health cost history. Federal monies would constitute only a portion of the financing base. States could choose how to finance their portion of the health budget.

While the standards for national health reform would be national, states would retain autonomy in choosing how to meet these standards. States could implement a system resembling the Clinton administration's plan. They could also pursue managed competition without mandatory alliances or single payer or all-payer regulation or a combination of these proposals. As long as they satisfied national health reform standards, states would be free to create the health system of their choice.

III. DISCUSSION

What are the political advantages of a state-led or federalist health reform? By mandating principles of reform without imposing a single reform strategy, federalist reform addresses the puzzle of how to take advantage of the majority for health reform when that majority cannot agree on the precise shape of reform. The widespread support for universal coverage, cost containment and insurance reform is embodied in the national health standards. The diversity of opinions on how to achieve these goals is recognized by giving the states flexibility in meeting the standards. Single-payer and managed competition advocates will both find room in state-led health reform to realize their favored system and therefore ought to come together within the same coalition.

The federalist strategy will put opponents of reform on the spot. Legislators whose opposition to reform has been cloaked in objections to specific plans or elements of plans will have to come clean. They will no longer be able to object to national health reform on the basis of dissatisfaction with a particular reform plan; federalist legislation will not impose any one plan on the states. The political dynamics of health reform would be altered. The debate would no longer center, for example, on the desirability of mandatory health alliances. Instead lawmakers will be faced with a straightforward question: "Do you support the goals of national health reform; universal coverage, cost control and insurance market reform?" It will be more difficult to oppose national health reform standards than it is currently to oppose specific plans. The health debate will move to a terrain which is more comprehensible to the public—and where public support for reform will be a stronger political force. And that is crucial.

States vary widely in wealth, demographics, political culture, and medical arrangements. Given this diversity, it is preferable to give states flexibility in setting up health systems appropriate to their respective situations. Managed competition, for instance, is not obviously feasible in states with geographically dispersed low populations; there is insufficient population density to sustain a system of competing health plans. On the other hand, states such as California with substantial HMO experience will be more comfortable with such arrangements. The political perspective on health care is not the same in Vermont as it is in Utah.

Moreover, many states have a significant track record in health reform. State health reform contains many examples of selective success such as Hawaii's universal coverage system and New York's hospital rate regulation. Even as the federal government considers national reform, states such as Florida, Minnesota and Vermont are pushing ahead with their own health reform plans. Most states would likely welcome the opportunity to pursue their own health reform strategies. Given states' socioeconomic and political diversity, their experience with health reform, and their preferences for maintaining their own health systems, does it not make sense to enact national health reform that gives the states the freedom to choose what kind of health administration they want?

The Clinton Health Plan has received criticism for limiting choice. This criticism is largely misplaced. Nevertheless, reforms must confront the problem of reform's association with restrictions on choice in medical care. By leaving the states free to choose their own administrative structure, the criticism the administration's plan has encountered will be ideologically neutralized; health reformers can seize the symbolism of choice. Health reform built on federalism will resonate with the public as a flexible, pragmatic solution to the nation's medical crisis.

As the proliferation of reform proposals in Congress demonstrates, there is more than

one route to universal coverage and cost containment. There is a great deal of uncertainty about how these plans would operate in practice. Managed competition has never been tried anywhere on a systemwide level and no state currently employs a single payer model. Given this uncertainty, it makes sense to take advantage of the opportunity federalism gives us by allowing for experimentation with various reform ideas. State-led reform will allow us over time to observe the effectiveness of various options for reform.

IV. CONCLUSION

The fundamental assumption behind the federalist strategy is that there is an existing but divided majority for health reform in Congress. We propose to mobilize this majority by providing a formula for health reform that reflects both reformers' consensus on the goals of national health reform and their disagreement on how to achieve those goals.

Many Legislators who do not agree on the direction of reform do agree on the necessity of reform. By pursuing legislation that simultaneously sets national health reform standards while guaranteeing state flexibility in implementation, a legislative majority committed to health reform but not to any one health reform can, we believe, be coalesced. The federalist strategy offers hope for enacting national health reform legislation in 1994.

FEDERALISM: MAKING IT WORK IN HEALTH CARE REFORM

(By Theodore Marmor and Jerry Mashaw)

I. INTRODUCTION

Our earlier March memorandum—National Health Reform: Where do we go from here?—argued that a federalist form of health reform made substantive and political sense in the current Congressional context. By federalist reform we meant a combination of a limited number of fundamental national standards for universal health insurance and substantial state discretion for choices beyond those architecture fundamentals. The national standards we noted included universality of overage, comprehensiveness of benefits, portability of insurance coverage, public accountability, and reasonable constraints on rising medical costs. Under this form of "strong federalism," the rest of the medical care domain is left for the states: whether or not to change the regulation of medical practice (who can do what with what licenses), whether to encourage changes in the organization and delivery of services (HMOs, PPO's, integrated health systems), how to implement cost controls that limit the rate of increase in medical expenditures (single budgets, all-payer systems, competitive health plans), and so on.

What follows here is an elaboration of what these board claims might mean in practice. We first address the question of what should not vary among the states—what should be uniform in health care reform. We discuss the case for substantial state discretion under the rubric of a simple question: Should one care if states vary in how they deal with this or that feature of a universal health insurance system?

II. PERSISTENT QUESTIONS: FEDERALIST ANSWERS

A. Should states be permitted to vary in who is entitled to health insurance coverage? Put another way, what does universal coverage mean operationally and what, if any, variation is permissible?

The answer, in our view, is simple. Citizens and resident aliens are the proper beneficiaries of guaranteed health insurance and no good case exists for permitting variation in this national standard. There are, however, grounds for treating the health costs of illegal aliens—and the burdens they impose on localities—as a serious, separate issue in spreading the costs of health services.

Universal coverage is a precondition of the economic security expected from reform. We cannot reach that goal without requiring that the great bulk of our citizens and legal residents have health insurance. Adjustments to the realities of illegal entry into the United States is certainly an important feature of national burden-sharing, but not one that should be built into the basic statutory entitlement. After all, the psychological security we hope to produce is for those legitimately within our borders. Dealing with the consequences of having others within our borders is crucial for states like Florida, Texas, California, and new York, but it is part of fiscal federalism, not entitlement to health insurance.

B. What does federalism mean for portability of coverage? If states are the basic administrative units for universal health insurance, the obvious question is of portability. The equally obvious solution is the national requirement that states recognize the terms of other state's health insurance programs. There are many practical issues involved here, but they are second-order ones; Canadian provinces have a half century of experience in doing precisely this in medical care. Conflict, it must be noted, is inevitable with portability requirements. States with different remuneration policies will necessarily have differences with providers of care in other states. Cross-state agreements will be required, but national legislation must require portability, not the details of its implementation.

C. How uniform should health insurance benefits be across states? Put another way, should one care if Minnesota residents have a health insurance plan that differs in its covered services from that of South Dakota? This is far more complicated a question than is usually recognized.

Having a system of universal health care that varies from state to state, but includes a federal financial contribution, raises three quite separable issues: First, there is the problem of raids on the federal treasury by sates that create "luxury" health insurance systems. Second, there is the problem that with different resources, states contributing the same level of fiscal effort cannot create the same comprehensiveness of coverage. Third, there is concern that some states will choose to have "inadequate" health insurance coverage.

The first and second issues are quite easily solved as part of the federal formula for transfers to the states. As in many systems of "cooperative federalism," the national formula should take account of the risk factors, population and financial resources available to states in calibrating the federal government's contribution. Though no calibration can be perfect, it is clearly possible to eliminate major disparities in state capacity by the ways in which federal financial contributions are structured.

Similarly, the federal financial contribution should be in the form of a block grant or capitated amount. States cannot make raids on the federal treasury by choosing luxurious health insurance benefits, if the total amount of the federal contribution for each year is fixed. Spending above that level will have to be done out of funds generated through state policies and the state political processes.

The problem of "inadequate" state systems is in many ways a non-problem. If we assume that the federal government is making contributions that substantially equalize state fiscal capacities, then claiming that a state has chosen an inadequate package of health care benefits says little more than that the speaker disagrees with the state's political choice. There is no agreed-upon "best" health insurance or care system a state could offer. Moreover, both needs and medical preferences vary widely across the United States. The question is why a national system should override a state's perceptions of its needs or, similarly, a state's expression of political preference about the shape of a health insurance package?

Virtually none of the arguments that usually justify national uniformity apply to health care. Certain forms of basic immunization may be required to prevent the spread of disease, but these "externalities" are a modest part of health reform. Moreover, preventive measures may be instituted quite separately from whatever insurance package is provided in particular localities.

There is little reason to expect a "race to the bottom" in health care provision. So long as health insurance is being made universal, the politics of health care in states will not resemble the politics of welfare or Medicaid. Universality can be reinforced by federal conditions that require state subsidy or supplementation for low-income persons—measures ensuring that everyone has access to insurance that is equally affordable to them.

Any argument that it is simply unfair to have state-by-state variations in health insurance benefits seems confused. To put the matter more charitably, it seems to assume some baseline of adequacy for health insurance coverage that is established apart from any process of collective decisionmaking about what adequacy means. In short, it is a criticism of a state's political process rather than a criticism of a state's health insurance program.

Alternatively, such an "unfairness" claim may be that strict equality of health care or (health care insurance) is an aspect of national citizenship. This is, to say the least, a controversial claim. There is a moral case for egalitarianism here, but it is not a necessary feature of acceptable reform. That a particular state wants to spend less on health insurance and more on other things expresses a political judgment with which one may disagree, but it is hard to see how it violates some transcendental right to a specific level of health insurance coverage equal to some other state whose system we happen to prefer.

Finally, there is very little reason to believe that some variation in health benefits from state to state will have major impacts on location decisions either of individuals or of firms. There is a huge literature attempting to discover that one or another social program has some major impact on migration or location. To date, no single factor has any significant explanatory power. There is no reason to believe that health insurance will be any different from other state programs for highways, education or welfare benefits.

In short, a strong form of federalist system would leave very wide discretion among the states to determine the "basic" or "comprehensive" benefits package for themselves.

A separate argument has to do with the terms of competition in states that want to implement the Clinton plan's scheme of managed competition. Some fear that in the

absence of a uniform national benefit package, competition would drive plans to vary their benefits to attract enrollees rather than concentrate competition on the cost and quality of the services provided. The truth is that regulating the terms of competition will be difficult in any event. The implementation of risk-adjusted premiums is a far more difficult task than American reformers realize, as known by anyone familiar with the five years of frustration in the Netherlands over trying to do just that. There is less reason to insist on uniformity of benefits (beyond a basic package) and more reason to worry about the implementation of risk-adjustment, we believe.

Moreover, part of the concern here is the predictable struggle of various service providers to have their work included in state benefit packages. Some believe that a uniform benefit package will insulate states from this struggle. We doubt that, but we believe the National Health Board should oversee the activity by sorting out such issues as what is worth including for reimbursement purposes in the national plan and what is not, who should be regarded as medical providers under the national plan and who should not be, and so on. Regardless, this should not lessen the role states now have in regulating the terms of insurance coverage and medical practice.

D. State accountability. The only national standard should be one requiring each state to have a designated agency of accountability. Citizens should know whom to address with complaints, but the authorities need not be uniform across the states. We know from the Canadian experience with health insurance federalism that a largely uniform package or benefits and eligibility is compatible with substantial variation in precisely who is accountable for the provincial administration of universal coverage.

E. Cost Controls. The central question here is whether national reform—with the goal of reducing America's rate of inflation in medical care—requires uniform rates of growth in medical expenditures. We think not, but emphasize that the design questions here are tricky.

One method is to control the rate of increase in federal contributions to state operations. Where this has been done, the relevant lesson is that subnational units must face the full financial consequences of the decisions they make. In short, you can legitimately control the funds flowing to states as part of national policy, but must structure the rules such that states face the political and economic consequences of either expansionary or contractionary policies. What is wrong is to have one unit of government pay and another administer.

On the other hand, if employer-employee contributions are to fund the bulk of medical care expenditures, the fiscal arrangements are a bit more complicated than when ordinary income or payroll taxes are involved. The architecture here requires attention; the models are numerous and each brings with it special difficulties. For now, we would urge concentration first on what would count as the desired performance an second on what levers of reward and penalty the national government can impose. Draconian measures are only apparently attractive; they are largely useless in practice. Modest signals are attractive to states, but are not responsible responses to the national goal of constraining expenditures over time.

CONCLUSION

The case we have made is for a strong version of federalism. How one proceeds depends on whether one begins with a strong federalist model and treats a variety of stat plans as options or whether one presumes the Clinton plan is the preferred model and structures "options" to it. This is the issue we take up now.

STATE FLEXIBILITY UNDER THE PROPOSED PROVISIONS OF THE CLINTON HEALTH SECURITY ACT

I. INTRODUCTION

The proposed Health Security Act offers states the option of adopting a single-payer system (or an alliance-specific single-payer system) if it meets the various conditions of the Act. There is a catch, though. Those conditions narrowly constrain most of the areas in which a state might wish to exercise programmatic discretion.

For instance, the state must provide the comprehensive benefits specified in the Act. While a state may reduce co-payments, it may not compensate for those reductions by increasing co-payments for other goods or services. The state's overall expenditures are limited to a sum that will not exceed an amount determined (by §6003 of the Act) on the assumption that the state is simply a single regional alliance for that particular year. As defined in the Health Security Act, the state must cover everyone who is alliance-eligible and must function like an alliance itself—offering, for instance, reductions in cost-sharing for low-income individuals, data collection quality and anti-discrimination requirements.

Moreover, states are locked into employer-based financing as a principal source of revenue. They are required to raise at least as much from employers as those employers would have been required to pay in premiums for their alliance-eligible employees. Presumably, states have some discretion over how they would phase in their single-payer system during the transition period, but that period is quite short. All states must be participants by 1998; is not, the federal government takes over and administers the Health Security Act's version of managed competition for the state in question. The question, then, is: What amount of flexibility do states have under the Clinton plan?

II. AREAS IN WHICH TO MANEUVER

The major "wiggle room" provided by the single-payer alternative comes in two areas: The extent of delivery system reform and the state's choice of administrative and regulatory arrangements. Even here, however, the state discretion allowed is rather modest. Only a single-payer arrangement is permitted—or the Clinton plan plus one "alliance specific single-payer" arrangement. To be sure, this leaves the state some considerable discretion in how it approaches cost-control (capitated payments, prospective payments or whatever) and quality assurance activities Nevertheless, it excludes systems that would use multiple, but perhaps highly regulated, payers, as in the current New York or Maryland hospital payment systems. It also excludes other major alternatives such as a system of individual mandates and subsidies combined with small market insurance reforms.

Moreover, while the single-payer approach does not commit a state to the Clinton Administration's health plan delivery system, the statute's highly specific coverage provisions give states little freedom to experiment with major shifts of health care resources (perhaps toward preventive care and palliative care)—at least if they plan to finance those shifts by downplaying some other parts of the comprehensive benefits package. In short, while the single-payer arrangement allows states to leave the traditional fee-for-service medical system largely in place, the combination of cost-control constraints and benefits entitlements probably leave them a modest practical opportunity for profoundly rethinking the role and shape of medical care in population health.

III. IDEAS FOR BROADENING THE CHOICES

It may well be that the level of uniformity and federal control central to the Act's single-payer opt-out provisions are politically necessary to its acceptability. If one takes that as a political given, then the question becomes whether additional and parallel "opt-out" arrangements could be provided to broaden the menu of state discretion and thereby overcome some of the objections to the Clinton plan itself.

Broadly speaking, there seem to be two alternative systems of universal comprehensive care, in addition to the single-payer option, that might be provided as corollaries to the Clinton Health Security Act. The first system could be called "multiple regulated payers." In such a system the state would function, not as a single payer, but as a regulator. It could cover all applicants, provide an identical comprehensive basic package of insurance, ensure that all payers play by the same rules, and simplify administration through unified billing procedures, specified fee schedules and other cost-containment measures. This, as we have said, is the way that Maryland and New York currently handle hospital payments and the Federal Republic of Germany handles its whole national insurance program.

To some, the advantage of the multiple regulated payer scheme will surely be the preservation of much of the existing insurance industry, although in a highly-regulated form and one in which most small players eventually will have to merge or drop out of the business. Like the single-payer system, it preserves the existing delivery system more or less intact. The multiple regulated payer system also builds on our several decades of experience with price setting for the medical care industry under Medicare, Medicaid, and several state systems.

Such a scheme could seemingly be made an option in very much the same way as the single-payer system in the current Health Security Act. Obviously some changes would have to be made. For example, the enrollment and issuance of health security card obligations would have to be put on insurers or self-insuring employers rather than on the state as a single-payer. There would be no need to permit states to fold self-insuring employers or Medicare recipients into a multiple-payer system other than to provide the states with the power to regulate these payers as they regulate others. (For Medicare this would of course require the usual waiver, such as the one under which Maryland currently operates for hospital care.) And, because the state would not be the insurer, there should be no exemption from the Health Security Act's requirement that states provide a plan for financial solvency of the regulated payers.

The other major alternative is an individual mandate system with subsidies. It is trickier to design as a state option. If done at the national level, the individual mandate operates by translating the employer tax deductibility of employee health care benefits into personal, refundable income tax credits for the purchase of the defined basic benefits health insurance package. In so doing, it

maintains the federal fiscal effort that is now concentrated in the tax code in the form of employer deductibility of health care expenses for their employers. It also translates that federal fiscal effort into a fully portable benefit for individuals. Because states do not have control over the Internal Revenue Code, this feat of fiscal alchemy is more difficult to accomplish on a state-by-state basis. Nevertheless, the situation does not seem hopeless. The question is whether it is worthwhile.

For example, it might be possible to allow states to elect an individual mandate approach if they permitted the individual mandate to be satisfied by an employer's purchase of insurance (or employer self-insurance) that delivered the comprehensive benefits package. Employers who use this device would of course receive the usual tax deductibility, capped at an appropriate level. For those who were not covered by their employers, there could be an individual tax credit, funded by a special tax on employers not providing health care benefits. The tax would be equal to the amount that they would otherwise have paid into an alliance for their alliance-eligible employees under an employer mandate system.

It is hard to believe, though, that this approach would be very attractive as a state option. As described, it begins to look very much like the old "pay or play" system. It is, in substance, an employer mandate disguised as an individual mandate. And, if employer mandates are the objectionable feature of the Clinton plan, this state option hardly removes that feature. In short, if one wants to move to comprehensive insurance coverage via an individual mandate and tax credits, this is probably better done as a national plan, rather than as a state option.

IV. CONCLUSION

In summary, then, the existing opt-out provisions of the Health Security Act provide some room for states to experiment or avoid features of the Clinton proposal that some find objectionable. This option could readily be expanded to include schemes employing multiple regulated payers as well as single payers. Its usefulness does not extend, however, to states that wish to diverge more radically from the Clinton or single-payer approaches.

[From the New York Times, June 12, 1994]

50 LABS FOR REFORM

(By Jerry L. Mashaw and Theodore R. Marmor)

NEW HAVEN.—The debate over health care reform has reached a critical juncture. There is significant opposition in Congress to the Clinton plan without anything like consensus on an alternative.

How can a workable version of national reform be enacted when there's no majority for any single plan? The challenge for reformers is to find a strategy that reflects the political agreement on the goals of health reform as well as the disagreements on solutions.

The reformers are split into factions favoring managed competition, a single-payer system, expansion of Medicare and various hybrids of these approaches. But these divisions should not obscure the broad agreement among reformers on fundamental principles: universal coverage, reliable cost containment and radical reform of health insurance practices.

If a legislative proposal can be developed that brings together all those serious about health reform—no matter what option they favor—a majority can be created to overcome the resistance of reform's opponents. The trick, then, is to pursue legislation that builds on the reformers' common goals while recognizing their differences on how to achieve them administratively. One solution is the federalist option.

After all, the states have already achieved more on reform than Congress has. There is no reason to stop their progress, and every reason to encourage it. The federalist approach would set national standards for health insurance—that it be universal and portable (not based on residence or employment), cover all medical necessities and have effective cost-containment methods plus clear accountability for the quality of the overall system.

Having done that, the Government could promise to continue its current financial contributions to health care so long as the states met its conditions for acceptable plans. That would free states to experiment with any of the options the Administration has outlined—or any others, either existing or under development around the country.

In short, Mr. Clinton and Congress could acknowledge that medical organization and practices vary substantially in different geographical areas, as do demographics and political beliefs. They could develop a plan that motivated state experimentation, rather than mandating a single system for the entire country.

Mr. Clinton could insist that national legislation—Medicare, Medicaid, the Employee Retirement Income Securities Act and the Internal Revenue Code—not get in the way of state innovation, but nonetheless impose sanctions on states that did not conform to broad national standards.

This approach recognizes that the nation does not yet know what works or will work everywhere. It would help the nation learn from successes and failures while avoiding the possible total failure of a plan imposed from Washington.

If Congress adopts an unproven and untested version of the Clinton plan and it turns out to be the health care equivalent of a train wreck, it would be sensible not to have the whole country on the same train at the same time.

[From the Los Angeles Times, July 7, 1994]

GIVE THE STATES A CRACK AT DEVISING REFORM

(By Theodore R. Marmor and Jerry L. Mashaw)

We have reached a point in the congressional struggle over health-care reform where there is enough opposition to defeat the Clinton Administration's plan but nothing like a firm majority for an alternative. With proposals emerging from the House Ways and Means Committee, Senate Finance Committee and three other committees, the press reports are confusing, the policy issues are unintelligible to most Americans and the chances of deadlock are considerable.

Can a workable version of national reform be enacted when no majority exists for any single plan? The answer is yes, but you'd never know it from the compromise proposals now making the rounds. The real challenge for reformers is to find a strategy that reflects whatever agreement there is on the goals of health reform and accommodates the disagreements on means. Instead, in the search for a plan that can pass, the compromisers focus on what seems doable politically rather than what is substantively desirable.

Three of these political compromises—which look appealing on the surface but are badly thought through—current crowd the agenda:

Amending the definition of "universal coverage." Debates on this issue mask a substantive disagreement about how great a role public compulsion, of either individuals or businesses, should play in ensuring coverage. A group in the Senate Finance Committee including John Chafee (R-R.I.) and John Breaux (D-La.) suggests giving up President Clinton's nearly 100 percent goal and substituting a 95 percent coverage "target" by the year 2002. This approach is misguided because it fails to confront either the large-scale insecurity or the cost escalation problems that have driven reform. Who will the 5 percent left uncovered turn out to be? You? Me? The chronically ill? The usually well? Only if we know whether reform was likely to achieve its major goals. The methods proposed to increase coverage if it falls below the target percentage may also be misaimed—either ineffective (another study of the problem) or pointed in the wrong direction (employer mandates, which would fizzle if the uninsured were not workers).

A continuing aversion to straight talk about paying for reform. This was evident in President Clinton's original proposal that employers pay for the health insurance of their employees, reinforcing the delusion that because employers write checks for health insurance, they bear the costs. Then and now, it is we citizens who bear the costs, whether it's through direct taxes, increased prices or forgone wages and employment. The only relevant questions—then or now—concern the fairness and sustainability of the distribution of the costs. We will keep paying a steep price in confusion and discord until this crucial matter is understood. Those who want to avoid all mandates—individual or employer—have given us a scheme that is truly illusory: Tax 40 percent of the most expensive health-insurance plans to provide subsidies for low- and moderate-income Americans. But people in expensive plans may be there because they are ill, not because they are rich. And the game-playing that will go on by people trying to stay below the 60th percentile ought to reemploy any insurance company personnel laid off by other reforms.

Forgetting about the cost-control problems that prompted the reform movement in the first place. The continuing escalation of health costs, which still threatens the affordability of health insurance, has dropped out of the vocabulary of compromise. Words like moderate or centrist typically appear in descriptions of senators like Breaux, Chafee, David Durenberger (R-Minn.), Kent Conrad (D-N.D.), David Boren (D-Okla.) and others, but they don't fit the reforms sponsored by them, because they contain no serious approaches to cost control. Just as it does not make sense to cross a chasm in two steps rather than a leap, it is impossible to have workable health reform without slowing the rate of expenditure increases.

Is there a compromise that builds on agreed goals but permits enough variation of means to assemble a majority for reform? One possibility is state-led reform (in this, California is a leader, with its modified single-payer health-reform initiative on the November ballot). Congress could pass legislation that provided federal assistance to states that enacted universal coverage, insurance law reform and reasonable controls on costs. This would leave states free to choose which administrative and health-delivery changes they wanted to implement. By mandating basic reform principles without imposing their administration, state-led

reform builds on the reformers' consensus about goals while allowing for wide differences in the means of achieving them.

States already have a significant track record in health reform, including Hawaii's near-universal coverage and employer mandates. Given the diversity of states, their varied experience with health care and intense local preferences, why enact a single brand of national health reform, especially if it's the poorly considered compromise that we seem to be headed toward?

By moving compromise in the direction of preserving goals rather than defining means, we can allow states the further thought and experimentation that are needed for effective implementation.

HOW WOULD LEGISLATORS DO IT?

(By Carl Tubbesing)

What, if state legislators were constructing it, would a final health care reform plan contain?

Flexibility.

Delaware Senator John Still summarizes the notion of flexibility this way: "There's a perception that states have flexibility in the proposal, but they really don't. The final plan should allow for diversity and accommodate differences among states. Achieving flexibility and protecting against unfunded mandates should be the two primary goals for states as the proposal moves through Congress. The plan should be changed to accommodate state reforms already in place."

Arizona Senate Minority Leader Cindy Resnick emphasizes the need for experimentation at the state level. "Why are there just two choices—managed competition and single-payer? Why not five or six? Would all states be comfortable with the managed competition approach? Arizona is a managed care state. But others have little experience with it and may like it a lot less. States have been aggressive about reform. The federal government needs to encourage experimentation," says Resnick, citing recent efforts in Florida, Washington, Hawaii, Minnesota and others.

Ohio Senator Grace Drake says simply, "I think we should let the states come up with their own solutions. You can't regulate all the states the same way. I met with Speaker Douglas Chamberlain, who's developing his own plan for Wyoming. I asked him, 'How many people live in your state?' He said, '470,000.' I have 330,000 in my Senate district. I said, 'You have more sheep than people.' You can't have an overall plan that tries to force all states into the same plan."

Represenative David Richardson of Pennsylvania and Missouri Representative Chris Kelly, chair of the House Appropriations Committee, wonder why the federal government doesn't just let the states take the lead. "I think most states will adopt major reforms before the federal government will," Richardson predicts. "Why not just let the states decide what approach they want to take?"

"Why should the federal government be doing it?" Kelly asks. "We can learn from each other. Maybe Missouri will screw it up. But maybe North Carolina will get it right. Missouri could learn from North Carolina and make adjustments."

One way of providing flexibility would be for the federal government to establish a framework, but allow for diversity among state plans. This approach echoes through several of the interviews. Senator Drake: "I prefer a Jeffersonian approach. Let the federal government provide a pattern with plenty of room for states to develop plans that suit their needs." Senator Still: "I would prefer that the federal government establish a basic structure. The model should define basic issues, but leave it up to the marketplace and the states to work out all the details." Senator Resnick: "Some would argue that you need a federal framework. Give us a federal outline and let the states provide the details."

What should the framework include? Senator Still provides the most comprehensive list: universal access, portability, no exclusion for preexisting conditions, provision for catastrophic illness, reduced administrative costs and guaranteed renewability. Senator Resnick adds a minimum benefit package to the list; Senator Drake includes coverage for the working poor and the uninsurable.

Some legislators have other ideas for an ideal final package. Illinois Senator Judy Baar Topinka feels strongly that the plan should place limits on the use of technology: "How many MRIs do we need on one block? How many heroic actions to save a life? Where do we put our resources?"

She believes the package should include tort reform. "I feel some resentment toward the president and Mrs. Clinton for taking a powder on tort reform," she says. "If we want health reform to work, we have to address it. They have to have the gonadal fortitude to take care of this." Senator Still, however, does not make tort reform a high priority, and Representative Jeffrey Teitz of Rhode Island believes this traditional state responsibility should remain with the states.

Pennsylvania Senator Allyson Schwartz believes "it is very important that the plan address questions of distribution of services and health professionals in urban and rural areas." Representative Charlene Rydell of Maine prefers a system with much simpler, income-based financing.

These legislators are sure that there will be plenty of opportunity to make their views known to the administration and Congress. They expect the plan to change. And they plan to influence it when it does. Representative Teitz predicts, "Any proposal of this enormity will go through a series of refinements. Even the designers of the plan expect it to change."

"I'm taking them at face value—that this is just a proposal and they are willing to modify it, to do whatever is necessary to get a workable system," says Baar Topinka. Senator Still predicts, "The Clinton plan will change significantly as it moves through Congress. And it should."

Rydell is confident that "the proposal sets the stage for states to work together and with the federal government. I'm optimistic the administration will work with the states and that a consensus will emerge."

Kelly is less optimistic and asserts he will oppose the plan if it is not changed to accommodate state interests. "We are not going to let them cram this down our throats. We could wind up saying 'don't pass it.' I'm not inclined to do that today. But they could force us to go to someone else if they don't negotiate."

All would agree with West Virginia Speaker Robert Chambers that the states should be involved in shaping the final outcome and "ultimately will look at it and judge if the good outweighs the bad."

[From the U.S. General Accounting Office, Sept. 9, 1992]

STATE HEALTH CARE REFORM—FEDERAL REQUIREMENTS INFLUENCE STATE REFORMS

(Statement for the Record by Mark V. Nadel, Associate Director Human Resources Division)

SUMMARY OF GAO TESTIMONY

GAO reported in "Access to Health Care: States Respond to Growing Crisis" (GAO/HRD–92–70, June 16, 1992) that states have taken a leadership role in devising strategies to expand access to health insurance and contain the growth of health care costs. Their approaches range from narrowly focused efforts to reform the health insurance market or contain hospital costs to comprehensive initiatives to achieve universal access to health care coverage.

States attempting comprehensive solutions are hampered by restrictions imposed by federal programs, particularly Medicaid, and by the Employee Retirement Income Security Act of 1974 (ERISA), which preempts state regulation of employee benefit plans, including health plans provided by self-insured employers.

GAO presented testimony on states whose reform plans are affected by federal laws. Hawaii, the only state requiring employers to provide health insurance, is able to enforce this mandate because the Congress exempted the state's 1974 law from certain ERISA provisions. The exemption, however, limits the law to its original form and prohibits changes state officials believe are necessary to improve the effectiveness and equity of Hawaii's system.

In enacting a health care reform package in 1992, Minnesota officials tried to design a plan that would not require relief from federal restrictions, thus limiting the state's options. To fund a state-subsidized health plan for lower-income uninsured residents, the state levied a provider tax that hospitals may pass on to all payers. The provider tax is currently being challenged on the basis of ERISA.

Florida's health plan, enacted in 1992, would require statutory changes to Medicaid and also might require an ERISA exemption. If employers do not voluntarily offer coverage to their employees by the end of 1994, the law contemplates a mandatory system, which could be affected by ERISA. State officials would also like to expand Medicaid coverage to people without employment-based insurance who are near poverty but ineligible for Medicaid.

If Congress decides that reform at the state level is an appropriate path, it should consider reducing the potential barriers to comprehensive state reform. States considering reform perceive restrictions associated with ERISA and Medicaid as potential obstacles. Congress could facilitate state reform efforts by developing approaches that provide states with early assurance that they will receive the federal cooperation necessary to implement change.

Mr. Chairman and Members of the Committee: This statement discusses our report, "Access to Health Care: States Respond to Growing Crisis" (GAO/HRD–92–70, June 16, 1992). Providing health care to every American has become one of the most serious problems facing the nation. The number of individuals without—or with inadequate—health insurance is increasing, while the cost of providing care is growing. Our report responded to a request from Representatives John Dingell and Ron Wyden to describe state initiatives that address the problems of

access and affordability in the health care system and to report on federal barriers that limit state options for achieving universal access to health care. Recently you asked us to provide additional information about the need for states to obtain changes in federal laws to implement innovative health care reform.

Several states are developing programs designed to expand access to health insurance and contain the growth of health care costs. None has found this to be an easy process. State political leaders must assemble coalitions of supporters from the variety of interest groups involved in—or affected by—their health care system. To do so, they must frame proposals that will win the support of—or at least be acceptable to—health care providers, employers, taxpayers, and a patient population ranging from those currently well insured through those currently underinsured to those who have no insurance at all.

One barrier these state political leaders face is the preemption provision of the Employee Retirement Income Security Act (ERISA) of 1974. Another is uncertainty over the particular terms that the federal government will require as a condition for a Medicaid waiver. Oregon's recent experience illustrates this latter problem. State officials worked for several years to develop a proposal capable of garnering the political support necessary, but their effort was recently derailed by denial of their request for a Medicaid waiver.

In my statement, I would like to provide some background information on the federal laws that might restrict state efforts to achieve comprehensive reform. Then I will present the results from our recent report describing the reform efforts of several states. I will close by updating the legislative efforts of four states in this rapidly changing health reform environment.

BACKGROUND

When enacted in 1974, ERISA was designed to correct serious problems regarding the solvency of employer-sponsored pension plans, but ERISA covers all employee welfare benefit plans, including health benefits. ERISA established federal standards for these employee benefit plans—although it imposes few requirements on health plans—and preempted their regulation by states. Although preventing states from regulating health insurance plans, ERISA confirmed the states' authority to regulate insurance companies.

ERISA's preemption provision[1] enables employee benefit plans to serve employees in many jurisdictions without becoming subject to conflicting and inconsistent laws of various state and local governments. However, it has also produced a divided system in each state: the federal government has authority to regulate health plans provided by employers who self-insure but not health policies sold by insurance companies, and states can regulate health insurance companies and their policies but not the plans provided by employers who self-insure.

Under the Medicaid program, states receive federal funds only if they meet all relevant federal requirements, including eligibility and benefit plan standards. Medicaid eligibility is primarily tied to eligibility for the Supplemental Security Income (SSI) or Aid to Families with Dependent Children (AFDC) programs. Due to the eligibility restrictions of these two programs, young single people and childless couples are generally precluded from Medicaid coverage.

In addition to categorical eligibility requirements, Medicaid recipients must meet specific income and resource criteria. The income level that states set for welfare programs is usually the standard that applies to Medicaid eligibility. Medicaid eligibility levels vary across states, with only 16 states offering Medicaid to AFDC-eligible families with incomes over 50 percent of the federal poverty level.[2]

Some state reform plans that do not comply with existing Medicaid laws can be implemented by obtaining a waiver from the Health Care Financing Administration (HCFA). HCFA has the authority to grant Medicaid waivers and does so regularly. Some waivers, such as for managed care programs, can be renewed indefinitely. In addition, states can obtain demonstration waivers from HCFA that give them greater latitude to modify their Medicaid programs, but these waivers are for a limited duration and cannot be renewed.

STATES ACTIVELY PURSUE HEALTH CARE REFORMS

State governments have a major stake in financing and providing health care. States are a major purchaser of health care services in this country. On average, over 13 percent of a state's budget is used to fund Medicaid, which, in 1990, grew by 18 percent. An average of 20 percent of a state's budget goes to fund health care programs.

This has led to state governments' taking an increasingly active role in the search for solutions to our national problems of constructed access to health care and rising health care costs. During the first few months of 1992 alone, three states—Florida, Minnesota, and Vermont—enacted ambitious plans to reform their health care systems.

In some states, debate no longer centers on whether to set a goal of ensuring universal access to health care coverage, but on how to achieve it. Hawaii was the first state to try to extend coverage to all its residents, and its uninsured rate is the lowest of all the states. The principal tool that has allowed Hawaii to approach universal access is its 1974 law requiring employers to provide health insurance for employees working at least 20 hours a week. State requirements that virtually all employers provide insurance and that insurers cover all employees result in less uncompensated care and cost shifting. For most residents not covered by employers or Medicaid, the state has a subsidized insurance program, known as the State Health Insurance Program (SHIP), with less extensive benefits.

Minnesota, Florida, and Vermont are among the most recent states to pass laws aimed at providing coverage to all state residents. Minnesota's 1992 Health Right Act phases in several programs to extend access to health insurance to many of the state's uninsured. Key features of the act include creation of a state Health Care Commission, which is responsible for devising a plan to set targets for reducing the growth of health care expenditures, and a state-subsidized, managed-care health plan for lower-income residents not eligible for Medicaid.

Florida's 1992 legislation set a December 31, 1994, goal for universal access to a basic health care benefits package. It created the Agency for Health Care Administration to develop and administer a plan with specific goals and timetables for ensuring access, cost containment, and insurance reform.

Vermont's 1992 Health Reform Act proposes to provide universal access to all state residents by October, 1994. The legislation created the Vermont Health Care Authority, which is charged with preparing two comprehensive reform proposals—one based on a single-payer system and the other based on a multiple-payer system—to be voted on by the legislature. In addition, the Authority is responsible for administering the insurance reform, data compilation, and cost containment provisions contained in the law.

Instead of adopting comprehensive plans, some states have opted for programs targeted to specific uninsured groups, such as low-income children and adults. These states have expanded access to coverage for these populations either through state-subsidized private health insurance, such as Washington's Basic Health Plan, or expanded Medicaid eligibility, such as the Maine Health Program.

Most states have also adopted measures to make it easier for people with high-cost health conditions and for small business owners and employees to obtain affordable health insurance in the private market. Almost half the states have created high-risk pools to make insurance available to the medically uninsurable—people who cannot obtain conventional insurance because of their medical conditions—and to spread the risk of covering them among all insurers in the state.

To address problems in the small business insurance market, states have adopted a broad range of initiatives, including subsidies and regulatory reforms, that attempt to make insurance more affordable and accessible. Thus far, most of these efforts have had only a modest effect on the number of small firms newly offering health insurance to their employees.[3]

While most states have focused their attention on expanding access to coverage, some have made efforts to control increasing costs. Through changes in methods for reimbursing providers, these states attempt to limit the health care system's cost growth and administrative burden. For example, since 1972, Maryland has operated a hospital rate-setting system that reduces hospital costs and provides for nearly uniform payments by all insurers, both public and private. During this period, Maryland's hospital costs per admission fell from 25 percent above the national average to 10 percent below.

In an attempt to reduce administrative costs, New York State is now implementing a system to coordinate health care billing and payment procedures. The state's Single Payer Demonstration Project is expected to reduce claims-processing costs for participating hospitals.

FEDERAL BARRIERS HINDER STATE EFFORTS

One barrier to state health reform efforts is the budget problems experienced by many states, since many of these reform proposals require additional state resources. But states that overcome these budget problems find that their reform efforts are also hampered by federal laws and regulations. ERISA is a barrier because it preempts state authority to regulate employee health benefit plans. While ERISA was primarily intended to correct problems with the solvency of employer-sponsored pension plans, its impact on employer-provided health benefits has grown as more firms have self-insured for health benefits. Over half of U.S. workers are employed in firms that self-insure, and states cannot require such employers to provide a specific health plan or pay state-imposed premium taxes. The funding base for state-sponsored high-risk pools, for example, is limited because the insurance assessments that supplement individual premiums do not apply to

Footnotes at end of article.

self-insured companies. Without more flexibility in dealing with self-insured firms, states' reform options are limited.

On the other hand, many large employers and union groups fear that any diminution of ERISA could undermine the structure of existing employer-provided health insurance plans. Employers with operations in more than one state are concerned that alternations to ERISA might increase their administrative costs if they must comply with different requirements in different states. Some unions are also concerned that changes to ERISA may lead to limitations of their benefits plans or an increase in cost-sharing burdens.

Medicaid's rules and requirements also present obstacles to state reform efforts. States wishing to implement reforms may need waivers or legislative action to modify Medicaid requirements. Examples of such reforms are integrating the Medicaid program with a state health insurance plan or creating a single organization to administer all payments to health care providers. States find the process of obtaining Medicaid waivers and subsequent renewals to be cumbersome.

However, those administering this process have legitimate concerns that protections contained in the law not be compromised without careful thought. Medicaid regulations exist to ensure that state reform activities do not diminish minimum standards or quality of care for program recipients. In addition, the federal government is concerned that state reform efforts that expand health programs to a broader population might generate additional expenses for Medicaid. For example, some states that want to expand Medicaid to groups that are currently ineligible are seeking additional federal funds, thus increasing costs for the federal government.

In the remainder of this statement, I will discuss the experience of several states, primarily Hawaii, Minnesota, Florida, and Vermont, whose efforts to expand access to health insurance have been affected by federal constraints.

Hawaii needs Federal legislation to refine system

Hawaii is the only state that now requires employers to provide health insurance to employees. Hawaii is able to enforce this requirement because the Congress passed legislation exempting the state's 1974 law from certain ERISA provisions. In part because its law took effect before ERISA was enacted, Hawaii is the only state with such an exemption. The exemption, however, has frozen the Hawaiian law in its original form. The ERISA exemption is limited to Hawaii's Prepaid Health Care Act as it was passed in 1974; the state cannot amend the act unless specific legislation is passed by the Congress.

Hawaii officials believe they have made great progress in their quest toward achieving universal access, but they also told us that they need to improve the effectiveness and equity of the state's system. A small percentage of the population remains uninsured. The state cannot modify the mandated benefits package for employer-provided insurance, require coverage for dependents, or change the cost-sharing formula for premiums. Hawaii is currently seeking amendments to ERISA to permit it to respond to implementation problems or to improve the employer-mandate law.

Other states that have tried to move toward coverage of all their citizens have had to work within ERISA's constraints. States adopting universal access plans more recently than Hawaii did not have the option of requiring employer-provided insurance and had to devise other approaches. One strategy, enacted by Massachusetts and Oregon but not yet implemented, has been to create "play-or-pay" systems that rely on the state's power to tax. Employers are required to pay a tax to help finance state-brokered insurance; if they provide health insurance to employees, they generally receive a credit for the amount they spend on coverage. These laws, however, are expected to face legal challenges based on ERISA, and the outcome is uncertain.

Minnesota's options limited by federal constraints

When Minnesota officials considered different methods of reducing the number of uninsured residents in the state, they decided to construct a plan that would not require relief from federal restrictions. Avoiding federal constraints, however, was itself an approach that limited their options. One reason for ruling out a play-or-pay system, for example, was uncertainty about whether such a system would withstand an ERISA challenge.

A key component of the health package that Minnesota adopted is a state-subsidized, managed care health plan for lower-income residents who are not eligible for Medicaid. In addition to collecting premiums from enrollees, the state will fund the plan with a 5-cent increase in the state cigarette tax and a phased-in provider tax: (1) a 2-percent gross revenue tax on hospitals (effective 1993) and on physicians and other health care providers (effective 1994) and (2) a 1-percent tax on HMOs and nonprofit health service companies (effective 1996). Hospitals may pass the tax through to payers during 1993, to the extent allowed under federal law.

Minnesota officials decided to use a provider tax so that financing would come from within the health care system. Because ERISA preempts states' ability to regulate employee benefit plans, other financing mechanisms, such as a premium tax, would not have reached self-insured employers.

State officials told us that ERISA precludes their taking other actions that could enhance the effectiveness and fiscal soundness of their program. For instance, they would like to discourage employers who currently provide health insurance from dropping coverage for employees who could be eligible for the program, and have discussed techniques such as taxing these employers. They are concerned, however, the ERISA may bar such an approach.

Another idea Minnesota officials are considering is collecting the premiums of program enrollees through a payroll deduction mechanism. They are not sure whether ERISA would prevent them from requiring all employers, including those who self-insure, to collect the premiums for the state. In addition, their fears that their plan might be contested were realized when a self-insured union health plan recently announced that it would bring suit under ERISA to challenge the provision allowing hospitals to pass the provider tax through to payers.

Florida seeks Federal action

In contrast to the Minnesota approach, Florida policymakers enacted a health reform plan whose full implementation would require statutory changes to Medicaid and also might require an ERISA exemption. Florida's Health Care Reform Act stipulates that the state's 2.5 million uninsured should be offered coverage primarily through an expansion of Medicaid and an extension of employer-based insurance. Because the expansion of employer sponsored coverage is initially voluntary, an exemption from ERISA requirements is not needed immediately. Florida officials believe, however, that obtaining such an exemption now would provide a catalyst for voluntary expansion of coverage.

The Florida law asks employers in the state voluntarily to offer coverage to all of their employees by December 31, 1994. A newly created state agency will establish interim targets, by firm size and industry, regarding the percentage of employees and dependents insured and the number of employers offering insurance. In this way, Florida hopes to challenge its business community to expand employee health insurance on a voluntary basis. If substantial progress has been made towards insuring all employees by the end of 1994, the state will continue this voluntary approach. However, if target levels are not met, Florida officials will consider implementing some type of mandatory employer-sponsored health insurance system.

A potential obstacle to the expansion of employer-sponsored coverage is ERISA's preemption of state regulation of employee benefit plans. ERISA precludes Florida from mandating employer-based coverage. In addition, Florida could not levy a premium tax or specify a minimum benefits package for all employers because the state could enforce these requirements only with respect to employers that purchase health insurance, not those who self-insure. Florida officials are considering a play-or-pay requirement, but recognize that employers could challenge such a system under ERISA.

State policy makers think that if the state has the ability to compel all employers to provide health insurance, employers might be more inclined to provide coverage voluntarily. Therefore, Florida officials have proposed that the Congress amend ERISA's preemption clause with respect to health plans.

Another element in Florida's strategy to provide universal coverage is to expand Medicaid to people without employment-based insurance who are near poverty but ineligible for Medicaid. Because approximately 600,000 Floridians are in this category, state officials would like to implement a Medicaid buy-in program that de-couples economic assistance from medical assistance. Medicaid coverage would then be expanded to those who may not be categorically eligible and who have incomes below 250 percent of the federal poverty level. Under this program, state officials expect that participants would share in the cost of premiums and would be offered a benefits package that is less comprehensive than Medicaid's.

It is possible, though unlikely, that this proposal could be implemented through a 5-year non-renewable demonstration waiver. Florida officials, however, told us that they need congressional legislation because limiting the duration of such a complex program to 5 years would not justify the difficulty and expense of implementing it.

Medicaid requirements also may constrain Florida's efforts to control the cost of its health care system. Part of Florida's cost containment strategy is to place its Medicaid population in managed care settings. HCFA is authorized to grant waivers that allow states to implement such programs, but the law also stipulates that Medicaid and Medicare beneficiaries cannot constitute more than 75 percent of an HMO's patient population.[4] In some parts of Florida, this requirement is difficult to achieve, thus hampering the state's attempt to provide more care through HMOs.

Florida officials are also seeking changes to Medicare laws. They would like the Congress to amend the laws to permit wide-scale demonstrations of alternative payer systems, including state administration of all Medicare benefits through a single-payer system.

Vermont anticipates need for Federal relief

Vermont's reform proposal is similar to Florida's in that it defers immediate need for relief from federal restrictions. The cornerstone of the plan is the implementation of either a single-payer or multi-payer universal system by October, 1994. The legislature will decide which system to implement after November 1, 1993. Key components of any Vermont system will include universal coverage, uniform and portable benefits, capital expenditure controls, and global budgeting for hospitals and providers.

Vermont officials believe that ERISA is the largest hurdle for implementing their universal access plan. They are concerned that as the state gains more control of the health system, more employers will self-insure, removing themselves from the system. In addition, they realize that if the state were to implement a single-payer system, at some point they may want to include Medicare within the system. State and federal officials are uncertain whether Medicare could be integrated into such a system under current law.

CONCLUSIONS AND MATTERS FOR CONGRESSIONAL CONSIDERATION

An increasing number of states are trying to expand access to health insurance while controlling increases in health care costs. Their approaches range from narrowly focused efforts to reform the health insurance market or contain hospital costs to comprehensive initiatives to achieve universal access to health care coverage.

Comprehensive state reform solutions have proved challenging to formulate and implement. States not only are having difficulty in building support for their reform efforts, but also are hampered by federal laws and regulations that make it difficult to design and implement innovative health care reforms. State officials have commented that the uncertainty associated with receiving permission to circumvent federal requirements has hindered comprehensive reform.

There is widespread agreement that our health care system needs major changes. Some believe that such change can be achieved most effectively through national reform. Others contend that states should take the lead on reform efforts either;

(1) To gain information on the feasibility of incorporating such changes into a national plan, or

(2) To permit states to design unique plans that are most appropriate for each State's particular characteristics.

If the Congress decides that reform at the state level is an appropriate path, it should consider reducing the potential federal barriers to comprehensive state reform. For a state that is pursuing the difficult process of comprehensive reform, ERISA eliminates some options, such as mandated employer coverage. Additionally, some states are struggling to implement approaches specifically designed to circumvent ERISA, but still fear that their plans might not survive a challenge based on ERISA.

Congress could facilitate state reform efforts by developing approaches that provide states early assurance that they will receive the federal cooperation necessary to implement change. For example, states would need assurance that they could obtain a limited waiver from ERISA's preemption clause in order to develop certain innovative universal access systems. The Congress could define minimum standards—governing such factors as benefits packages, extent of coverage, accountability, and terms under which the waiver application might be revoked—that a state must meet to receive and maintain such a waiver.

Additionally, if the Congress is interested in state demonstration projects that achieve universal coverage through an approach entailing the use of Medicaid funds, the Congress might consider amending or streamlining the waiver process for Medicaid restrictions. This would facilitate the integration of the Medicaid program into state comprehensive reform efforts.

FOOTNOTES

[1] 29 U.S.C. section 1144 (1988).

[2] Recently Congress has passed legislation that expands and enhances Medicaid maternal and child health services. Medicaid eligibility has expanded to improve the access of low-income women, children, and infants to needed health care by not only broadening the allowable service coverage to these groups but also severing the traditional link between Medicaid and AFDC income eligibility criteria.

[3] For a more detailed discussion of state efforts to modify the health insurance market for small businesses, see "Access to Health Insurance: State Efforts to Assist Small Businesses" (GAO/HRD-92-90, May 1992).

[4] A state can request a demonstration waiver that would permit them to increase this percentage.

Mr. GRAHAM. Thank you, Mr. President.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KERREY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KERREY. Mr. President, what is the business at the moment?

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Nebraska [Mr. KERREY] is recognized to speak for up to 30 minutes.

Mr. KERREY. Mr. President, I yield such time as necessary to the Senator from Minnesota.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota is recognized.

HEALTH CARE REFORM

Mr. DURENBERGER. Mr. President, I am going to speak briefly this morning on health reform and some of the issues that we talked about Tuesday morning in terms of cost containment and coverage.

At the end of it, I hope to have a couple of comments relating to the subject that my colleague from Florida discussed also in terms of State flexibility, and they will probably be very different from my colleague, but it does not in any way reflect on the respect that I have for him because, in many ways, we are of one mind on the failure of this Nation to sort out responsibilities between various levels of government in order to meet the needs of people.

But in health care and in the reform of health care, particularly when we are talking about access to medical services, I think it is a very, very different problem, a different situation, which calls for a different solution, and the Federal missions become very, very important. Even though they are not well understood, they really are very, very critical.

Let me begin where I left off on my comments on Tuesday with trying to distinguish in the whole debate about health care reform, what is reform or change and what is an extension of coverage?

As we all know, there seems to be a great deal of confusion here not only in this town but I suspect across this country, as to whether or not reform is all about extending coverage or whether reform is about changing the current system. It seems to me that most problems people are experiencing are with the current system. Obviously, what they like is also in the current system. Trying to balance that right now is the challenge of health care reform.

But the reform and all of the efforts of the reform, no matter whose plan you might choose, is designed to reduce the costs in this system, maintain and enhance the quality, and increase the affordability; in other words, make it possible for every single American to have what the wealthiest of Americans believe they can have simply because they can afford to buy it. That is reform.

The coverage side means to expand the benefit of this high-quality care, to every single American.

Yesterday in the Washington Post there was an interesting article by Steven Pearlstein entitled "Containing Spiraling Medical Costs Isn't Popular Topic With Reformers," and points out the obvious, which is most Americans—and I will just quote the cut line under the Reischauer picture. Bob Reischauer of CBO says, "Cost containment hurts * * * access makes people happy."

We all know that in this town, change or the prospect of change creates apprehension. Promise of more creates good feelings.

That is the real challenge that we face in reforming the current system.

There are two basic ways, as this Steven Pearlstein article points out, to contain costs of health care or medical care or practically anything else in this country. One is to increase competition among providers and increase choices on the part of consumers. And the other one is to have the Government control the prices. Those are the two basic choices.

In America, if I were to try to state a goal that we would hold out for ourselves in health care, we would say we want access for all Americans to the highest quality care at a lower cost than we are presently faced with today.

So you can contain the costs under either of these two options: Competition, choice, markets; or Government. But under the Government approach, you simply cannot get the high quality because the only way you can get to have more and have better at a lower cost is through productivity, doing things better. And Government productivity is an oxymoron, two mutually inconsistent words.

So the only way you can get more productivity and more affordability is from competitive markets where consumers have the leverage of informed choice. Government price controls simply are not an option.

Now, the article in the Post points out very succinctly that President Clinton last year tried to have it both ways.

He advocates more choice and more competition, but then he regulates the new system that is designed to do it—premium control, fixed expenditure budgets, government alliances, employer mandates, Government boards and commissions, overlaid on top of what he describes as a new functioning market. It does not work.

The premium controls are gone in most plans. In most of the plans that I have seen, the budgets are gone, government alliances are going, employer and individual mandates, we hope, are gone.

So what does that mean? That those of us who advocate competition and choice can declare victory and go home? No. No, we cannot. Why? Because we cannot get to our new goal unless we also change the Government-run, price-controlled system that today in America drives the health care costs right here in the current U.S. system.

Now to understand this, Mr. President, you must understand this: At about the same time 30 years ago when the first Canadian Province went to universal coverage by creating a single-payer system, the provincial government decided they would set fees for the doctors, they would set fees for the hospitals, and they would pay the bills. About the same time the first Canadian Province did that, a single-payer system in Canada, we did the same thing in the United States of America. And while Canada now has a government-run, price-controlled system for the whole country, we, unfortunately, installed a system only for people 65 and older, for the disabled, and for welfare dependent low-income persons.

We know that Government program, the Canadian system, in the United States as Medicare and Medicaid. The unfortunate thing is that it is run in the heart of every community in America. Unfortunately, it is surrounded by an American system in every one of these communities. And in the American system in each of these communities, the Government does not set the fees for the services. The Government does not control the prices to be paid.

So in every community in America today, we have one-fourth of our citizens in a Canadian system and three-fourths in an American system.

So you say, "What's wrong with it?" Well, nothing, until about 10 years ago. So long as the Government paid the same fees for the same services for the Canadian system that the employers and private insurance companies were paying in the American system, there was no problem. No problem. But in 1983, right here on the floor of the Senate, we passed something called the Prospective Payment System, and we said in the government-run Canadian system we are now going to set fixed prices for all the 468 hospital procedures. That meant that the Government was going to control prices for the elderly, disabled, and low income for all of the hospital procedures. At that point, the problems began. Now, the hospitals were only going to make so much money for all of these patients.

So what happened? The doctors saw their patients someplace else and they got paid under the second part of the Canadian system, here in Medicare called part B. If you put your patient in the hospital, you could only get so many dollars from the Government. But if you saw your patient somewhere else under part B, you could get as much as you wanted. Whatever you charged you got paid. And what happened? The hospital payments under part A started to level off and our payments, our subsidy payments, under Medicare part B exploded.

So when the Government froze part B payments in 1985 and 1986, the doctors all responded by seeing twice as many patients or doing twice as many procedures. That is what happened. So that is the effect of price controls in a Government-run system.

What happens then, let us say you try to see twice as many patients or do twice as many procedures. You can get away with that only so long and as the Government starts to reduce its payments to you, as compared with what your actual costs are. You can make up some part of that by doing twice as much, but at some point in time you run out of hours and you have to see patients who are not in the Government system.

So the smart thing is, you see only so many Government patients, and then you see the people that are in the American system. And then what you do with this difference between what it costs you to open your doors and see people and what the Government will pay you, you take that difference and you add that to the bills of the American system patients that you see. And that is what has been going on.

Doctors will see the one-fourth of their patients in the Government system at 59 percent of what they get for other patients, which is what the Government pays the doctors, and they pay the hospitals about 71 percent. As a result, the doctor and the hospital take that difference and try to put it over on their private-paying patients.

So when we in the Government decide we are going to save Medicare money or Medicaid money when we want to get budget savings by cutting Medicare and Medicaid, what happens? We make this cost shift even worse because we are reducing the payments to the doctors and the hospitals and accentuating the shift, where it is possible, over on to the private-paid patients.

Late in the 1980's, all the employers, or many of the employers, said, "Hey, stop. We have had enough of this. It is enough to pay the bills for our own people, our own workers. Don't add on everybody else's payments on top of it."

So since then, we have seen a change. And let me just show you on this chart the nature of that change.

In the 1980's, the payments were roughly the same in both of the systems, but clearly starting in the early 1990's, the lines started to diverge. And if you follow this line, this is the growth in the cost of the Government-run system, just one of them. That is Medicare. And up to 1993, it goes up at the rate of about 10 percent and after that it is now going up at the rate of 11.5 percent a year.

Remember, this is a price control system. The growth in expenditures is not because we are giving providers 11.5 percent more money. It is simply because, in order to see these patients, they are going to do a lot more services and procedures, they are going to charge the system as much as they possibly can in order to pump money into this system.

By contrast, what is going on in the American system? Here is the private insurance line. That line is starting to come down. Here is the Mayo Clinic, which has 1,100 doctors in a huge system, coverage for much of America, but providing care for many of Americans. That line, since the 1990's, has been averaging about a 3.8-percent-a-year increase and in the last 2 years it is less than 1 percent.

So you see, in the American system where three-fourths of the people are, the costs are coming down. But in the Government-run system—the one we run for the elderly, the disabled, and the low income—the costs are going up even faster, even though our payments to the system may not be.

And so, I tell my colleagues to take a look at this, as we get close to the

end of health care reform; that if we really want to reform this system, one of the essential ingredients is to do something about the President's promise that every American could have a private health plan that could not be taken away from him.

It is essential to reform that we end the Canadian system that we are running in America—not overnight; allow the people to help us do it. But at least give people in our communities the option to get out of the Canadian system in their community and into an American system that will hold the costs down at a pace as good as the Mayo Clinic to less than 1 percent a year.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Nebraska [Mr. KERREY].

Mr. KERREY. Mr. President, I have a speech I will give. I just want to point out that what the Senator from Minnesota has done with his speech, and what I will attempt to do with mine as well, is to refocus attention away from this current public question, which is, "Are we going to have a soft trigger, hard trigger—what kind of mandate might be in there?"

I must say, though I find myself arguing against the mandate of insurance, what is far more important is whether or not the bill we discuss and the bill we debate and the bill we write will reduce the regulatory requirements of the Federal Government and give the market an opportunity to work. There will be many people who are already coming to us asking to be protected from the market, asking to be protected in some way, shape, or form. I believe strongly we cannot make the mistake of driving initial Government demand into the system while simultaneously restricting the supply by protecting people in one way, shape, or form. So, far more important to me in this legislation the majority leader is drafting right now—far more important than the question of a mandate, which I have already indicated I do not like—far more difficult for me will be the presence of lots of regulations that make it difficult for the market to work.

THE GRINCH THAT STOLE HEALTH CARE REFORM

Mr. KERREY. Mr. President, I have a title for this particular speech. It is entitled "The Grinch That Stole Health Care Reform." I want to make it clear I do not have the Republican leader in mind this morning, unless of course he has filibuster in mind. I have in mind, instead, some rather difficult economic and political facts about health care and health care reform.

The difficult economic fact is that we spend too much on health care not too little. And the more we spend the more difficult it becomes for lower income Americans to afford health care services. The difficult political fact is that our most significant Federal post World War II actions have had the unintended effect of adding to health care inflation. Thus, a great double barrelled paradox: Our demand for more and more expensive care and our effort to extend coverage have contributed to the numbers of Americans for whom being uninsured is a dangerous way of life.

The Republican leader may still come grinch-like to this floor to delay action. However, he is not the chief villian here. The grinch I have in mind is all of us. Our collective appetite for health care services and our collective will to do good.

Let me be clear. I want every American to know with certainty that they will get continuous, high quality health care as a birth right. There should be no doubt and no requirement of groveling to prove some special status other than being an American under color of law.

There are tens of millions of Americans who are involuntarily uninsured and tens of millions more who wonder if they will be next. They ration the care they receive because they cannot afford to pay the bills. They deny themselves and their children good health. They do not enjoy the tremendous benefits of access to continuous health care. There is, as a consequence, a moral urgency to end this American fact of life.

However, let me also be clear: Our capacity to afford high-quality care is directly proportional to our productivity. Saying that you have a right to care does not guarantee high quality. That we Americans are going to have to earn. If our non-health-care economy does not make productivity driven gains, our appetite for quality will not be satisfied. No Federal law can guarantee the quality of our care. Only our willingness to work and produce can accomplish this task.

Further, good health is not just an issue of making certain that all Americans know they can get good care. While it is painfully obvious that accidents result in unavoidable and expensive tragedies which will require us to pass the collective hat, it is just as obvious that many of our costs are associated with self-inflicted abuse.

The horror story of an American child born with high medical bills should be balanced with the horrible tragedy of a society where women afflicted with AIDS or addicted to cocaine bring babies into this already difficult world. Rather than encouraging the idea that we are all victims of a system which is unfair we should be encouraging the idea that we are responsible for correcting our destructive personal weaknesses.

After making it clear that I believe health care should be a right, but that high quality care will have to be earned, let me throw one more bucket of cold water on our ardor for reform: Americans spend too much on health care. That is the problem. We spend too much because we spend too little time trying to understand how we could spend less. Except for those who have been given hospital, doctor, or pharmacy bills they cannot pay, most of us do not worry about how much we are spending because someone other than us pays the bills.

Instead of insisting that we be given information about the price and quality of services and products, we have been insisting on getting more of the product which shelters us from worrying about such things: Insurance. The whole battle cry of the health care debate—universal coverage—is a request to be protected from the requirement of having to understand and pay the bills.

Like the boys in the story Pinocchio who were enticed into having a good time at the fair, we have grown sick on the sweets and have become jackasses in our pursuit of better technology which can make us young again. While we have asked for more, more, more, we have simultaneously insisted that our Government erect a barrier between ourselves and the price of the goods.

How have we done this? In many ways. The four horsemen of the health care cost apocalypse are four Federal laws which were enacted to do good things, as they unquestionably do. However, in addition to helping they each drive additional demand into the system and reduced personal accountability to cost.

The four are tax treatment of employer provided health benefits, Medicaid, Medicare, and the dishonest budget methods used by the Federal Government. By treating health benefits as a fringe we encourage individuals to buy expensive plans which look less costly after taxes are paid. By collecting taxes and paying the bills for poor Americans on Medicaid and elderly Americans on Medicare we reduce misery, but we redistribute $280 billion into health care spending. Worse, because we allow the Federal Government to budget without balancing health spending with dedicated health revenues, citizens neither know what they are spending nor who is paying the bills.

I do not believe there is a villain whose activities are singularly responsible for our rising health care costs. There is no doubt that greed causes us to spend more than we should. There is no doubt that money has corrupted the decisions that are made by some providers, some institutions, some lawyers, some businesses, some politicians, and some patients. However, I believe the principal problem is that we have been simultaneously asking

for things that are in conflict with one another, and that the central argument of this debate will be whether or not we are going at last to trust that market forces can in fact produce sufficiency in health care, that market forces can in fact accomplish good things. That will be the central question that we need to answer.

Unless you are honestly arguing that the Government should take over health care, and some are honestly doing this, then we must in the spirit of honest disclosure tell the American people that the most important change which must occur if we are going to make this work is to change our behavior. We must learn more, work harder, and lower our expectations of the perfect medical outcome.

I sincerely believe if we reform the market correctly it can help provide citizens with the information they need to obtain high-quality care at a lower price. It will also provide incentives for health professionals to deliver care in a more efficient manner.

By using market forces, we can create an equitable health care system which allows us to subsidize those individuals who need help paying the bills. To be clear again, I am an advocate of interfering with the market to help people who cannot afford to pay the bills. For most people in this country, health care is not a frill. It is a life-or-death necessity.

My hope is that in this debate, we will come and at the end of the day, we will enact legislation that will provide the security Americans are asking for, provide that security in an environment where we recognize honestly that the market has been doing an unprecedented job in the past 3 years and that we ought to use those market forces to do even more good in the future.

I yield the floor.

Mr. DURENBERGER addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, I ask unanimous consent that I may proceed for 5 minutes as in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

HEALTH CARE AND NATIONAL UNIFORMITY

Mr. DURENBERGER. Mr. President, I think we are waiting for a couple of our colleagues to come to the floor to speak on other matters. But I want to rise to thank my colleague from Nebraska, not only for that statement but to tell my colleagues that when he arrived here as a former Governor, I did not know what to expect.

I was very surprised when, as a member of the Pepper Commission, Senator KERREY took me aside—he was not a member—and asked: "Do you suppose I could come to one of your meetings?" I said, "I don't know why not." He actually showed up and began coming to the meetings. While he could not participate as an active member, he attended those meetings, and he has since reflected not only the commitment that took him to those meetings but also a commitment to deal the imperative that the American people need some leadership from Washington, and the U.S. Senate in particular, to set a vision for the future of health care delivery and universal coverage.

I am so grateful for the last number of months that we have been working together in a bipartisan fashion to craft a bill that reflects not only that vision and that goal but also a practical bipartisan, bicameral way to get there. I am so grateful to him for the leadership that he is providing on the other side of the aisle.

Now that I have made reference to Governors, as I did in my earlier comments, another one of our colleagues who is a former Governor, our colleague from Florida, Senator GRAHAM, spoke earlier this morning on the role of the States in health reform.

As I indicated earlier, if there is a federalism issue around, this has to be it: How do you spend a trillion dollars out of the economy every year, and what is the role of Government in doing it?

Senator GRAHAM and I have spent a lot of time talking about issues of community health, public health, the way in which the medicalization of health care in this country is depriving Governors, depriving local communities, depriving families and people of the opportunities to do community-based health care the way we need to do it. However, I must say that I have a slightly different view than he has on the most appropriate role for State governments in helping all Americans gain access to medical services.

I think there is a critical role within States and in communities to enhance public health, community health, environmental health, housing, nutrition, immunization—all of the basic health needs. But when it comes to access to medical services, people get their medical services in local communities; they do not get them in States. Medical markets and communities are not confined to State borders. Therefore, we desperately need national rules by which these medical markets are going to work in the future.

If you look at where the anticompetitive, anticonsumer laws are in medicine today, they are all at the State level. Every one of them is at the State level because what has happened at the State level is that insurance companies, doctors—all kinds of medical professionals—have used State laws to protect their speciality from competition and to shield medicine from the consumer.

Look at State-legislated mandates, for example. Every insurance plan sold in the State of Tennessee must include chiropractic or must include podiatry. Or, in my State, insurance plans must include coverage for hair loss and for facial reconstruction. You name a new medical speciality, you name a new service, and somehow or another the servers have found a way to enshrine their service and their speciality in our State medical practice acts, called licensure, and in our State legislation, called insurance.

And when someone comes along and says, "We are going to practice medicine differently by sharing the risk, by enhancing the quality of services, by giving consumers more information and more choices," then the fee-for-service indemnity system rises up and enacts laws that say you cannot do that.

There is a current phenomenon called "any willing provider," which means that an integrated health care system, a clinic, the Scott White Clinic in Texas, the Cleveland Clinic in Ohio, or wherever, cannot decide which doctors can associate with them and which cannot. "Any willing provider" says you have to take them all. If some doctor applies, you have to take him. This sort of thing has been enshrined in State legislation all over the country, and it has given us a $1 trillion a year system, on the way to being a $2.2 trillion a year system.

So, Mr. President, as we debate what is the solution to the reform that is before us, I suggest we take an example of one national law that has made it possible for employers and employees working together to bring down the costs of health care.

That law is ERISA. We have the ERISA preemption rule which says that State legislation cannot impact employee benefit programs. So what has happened in health care is that all of these employers, rather than having to buy a $500 or $600 plan filled with all these State benefit mandates, filled with all of these contrivances from the medical industry, have said, "We are not going to buy insurance; we are going to self-insure. Our company will take responsibility, will bear the financial risk of caring for our own employees." Then they go out and hire benefit administrators, third-party administrators, HMO's—whatever the case may be—integrated systems, to change the way medicine is practiced, to improve the quality of access, to improve the services, to improve the prices for their employees.

That is why we see private sector health spending in the chart I referred to earlier, that line decreasing—because we have one national rule that protects people who want to have better care for less money from burdensome State regulation.

As we debate health care in the coming weeks, and begin to talk about why

we need a uniform benefit set at the national level, why we need national antitrust rules, why we need national liability rules, that sort of thing. Remember, it is because people do not get their medicine in States, they get it in local communities and those communities overlap—Tennessee and Kentucky; North Dakota and Minnesota; South Dakota and Minnesota, and so on. So people buy their health care in communities, they do not buy it in States. We need national rules so these local markets can provide more and better health services for less money for all of our citizens.

Mr. President, I yield the floor.

Mr. KOHL addressed the Chair.

The PRESIDING OFFICER (Mr. MATHEWS). The Senator from Wisconsin.

NOMINATION OF JUDGE STEPHEN BREYER

Mr. KOHL. Mr. President, I come here this morning to speak in behalf and to support the nomination of Judge Stephen Breyer to the U.S. Supreme Court, and to speak briefly—but critically—about the process that I believe will result in his confirmation.

Judge Breyer came before the Judiciary Committee with a reputation as a brilliant legal scholar and a fair-minded judge.

For the most part, the committee's hearings confirmed these judgments. Judge Breyer impressed us with his ability to simplify complex legal doctrines and cut to the heart of fundamental constitutional questions. His answers revealed that he is a moderate, that he is a reasoned man of principle with a commitment to the rule of law; a man who is likely to strengthen the center of the Supreme Court, rather than polarize it.

Throughout the hearings, two main criticisms were levied against Judge Breyer. First, many charged that Judge Breyer acted unethically because he ruled in cases that may have indirectly affected his investments.

I do not believe Judge Breyer acted unethically and I do not doubt his integrity in the least. If judges had to recuse themselves in every case that presented a possible conflict of interest, our courts would become paralyzed. But Judge Breyer could have taken more significant measures to dispel any appearance of impropiety. I am pleased, therefore, that he has promised, at the very least, to divest himself of all insurance holdings as soon as possible, although it is not clear exactly when that will occur.

It was also suggested that because Judge Breyer has spent most of his life dealing with books and theories, he lacks Justice Blackmun's empathy for "the poor, the powerless and the oppressed."

Well, it is true that Judge Breyer did not have an underprivileged upbringing. And it is true that he has spent much of his life as a legal scholar, rather than a hands-on practitioner. But we should not assume that because Judge Breyer has been fortunate, and enjoys the life of the mind, he is unable to care about others.

Judge Breyer seemed to recognize during our confirmation hearings that his actions as a Judge have very real consequences for the lives of the people the law governs. And he appears to be aware that beyond the marble columns of the Supreme Court is a world in which the politically powerless are entitled to as much justice as those Americans who hire the best lawyers and lobbyists.

It may be that Judge Breyer still has to demonstrate his professed commitment to making the law work for the average person. But I believe our confidence in him will be justified.

Having said this, there was much we did not learn about Stephen Breyer, and—despite my confidence in him—this concerns me. Judge Breyer's eloquence often gave him the appearance of answering questions when, in fact, he actually side-stepped them with sugar-coated generalities.

For example, he would not give an opinion on whether courts should be required, at the very least, to consider public health and safety before allowing for secrecy in civil litigation. And he refused to discuss many subjects, including voting rights jurisprudence, gender-classifications, and his own decision on abortion counseling—Rust versus Sullivan—with any degree of specificity.

Whenever Judge Breyer felt the need to avoid answering a question, he would cloak himself in his black robe and claim that the issue was within Congress' domain or that the question took him out of his role as a judge. Yet, at the same time, he did speak openly and freely on other issues which were just as likely to appear before the Court, or just as easily characterized as issues for Congress rather than the courts.

Why? The answer is by now well known: nominees seem only to answer questions when they want to—or when they feel they need to.

I point all this out not to chastise Judge Breyer, whom I respect. But I cannot ignore a nominee's unwillingness to answer reasonable questions. Indeed, the process demands that we should not.

Mr. President, we all know that because a Supreme Court Justice has life tenure, the confirmation process is crucial—it is the public's only opportunity to learn what is in the heart and mind of a nominee. Of course, we also recognize that there are limits to what a potential Justice of the Supreme Court can say before the Senate.

But these limits do not justify the type of hedging that we have seen from some past nominees—evasion that erodes the Senate's ability to faithfully carry out its advise-and-consent responsibilities.

Judge Breyer was probably more straightforward with the members of this committee than many nominees in recent history. In fact, Senator SPECTER went as far as to coin a new standard for nominees to live up to: the Breyer Standard.

In my opinion, however, we still have a way to go before we achieve the candor that the confirmation process demands and deserves. So I would like to impose an even higher standard on future nominees than perhaps would Senator SPECTER.

In the meantime, I commend President Clinton for nominating Judge Breyer—a man of great ability, who has demonstrated an enduring commitment to public service and to the law. I look forward to his tenure on the Court.

The PRESIDING OFFICER. The Senator from Washington [Mr. GORTON] is recognized to speak for up to 30 minutes.

REAUTHORIZATION OF THE ENDANGERED SPECIES ACT

Mr. GORTON. Mr. President, I join Senator SHELBY today in calling on the Clinton administration and this Congress to move promptly to enact a significant reform of the Endangered Species Act. The act must be changed to require better science in listing decisions, greater protection for private property rights, and more balance between species protection and human impacts.

To many of my colleagues, the reauthorization of this act may seem to be just another policy debate—one that we can tackle whenever space opens up on the Senate calendar. But for many families and communities in the State of Washington and across the Nation, every day that goes by without a reform of the act means more jobs lost, more mills and factories closed, and more demands on social service agencies already under extreme stress.

We simply cannot afford to wait much longer, Mr. President.

Regrettably, the current administration does not share this sense of urgency. President Clinton and Secretary Babbitt have said that the act is flexible enough to provide for the needs of both people and other species. They have suggested that the ESA only needs minor changes.

But the administration's own experience with the ESA contradicts this point of view.

President Clinton came to the Pacific Northwest during his campaign, promising balance in the application of the ESA to the management of timber harvest on Federal lands. He promised to reconcile the needs of the ecosystem

with the needs of the humans whose lives and communities depend on the ecosystem.

The plan he delivered last year is in no way balanced. It does not take into consideration the human element. The plan provides for virtually no new timber sales or harvesting from Federal lands this year or next. It will be years before the minimal and inadequate harvest levels included in the plan are reached.

I should like to believe that President Clinton was sincere when he said he wanted balance. But no amount of sincerity or goodwill can change the fact that the ESA is an expansive, loosely worded statute that preservationist groups have used to bring any number of beneficial activities to a grinding halt.

Mr. President, perhaps the administration's experience with the northern spotted owl has been instructive. Secretary Babbitt and Secretary Brown recently proposed an ESA initiative designed to improve the quality of science used in listing decisions, and to provide greater balance in ESA-related processes. I am gratified to see the administrations adopting policies that I have advocated for a long time.

But even with the best of intentions, I do not think that the President can bring true balance to the ESA process under the existing law. The act is too broad, and the stakes simply too high, to risk on the vagaries of an administrative initiative.

The act itself needs major reform. If we do not act soon, there will be more disasters like the one that has befallen our timber communities. In fact, there already are.

The Northwest is already embroiled in a highly complex debate over how to save threatened and endangered runs of Pacific salmon. While the vast majority of the people in the region badly want to save those salmon runs, some of the recovery measures that have been proposed are exorbitantly expensive, and would devastate many communities that depend upon the Columbia River system.

We have tried within the region to develop a salmon recovery plan that will satisfy the requirements of the ESA without costing hundreds or thousands of jobs. We may yet be successful.

But throughout this planning process, the bar that any recovery plan must clear has repeatedly been raised. We dramatically changed operation of the Federal Columbia River Power System at a cost measured in hundreds of millions of dollars, but a Federal judge said this wasn't enough to meet the requirements of the act. River managers then ordered a costly and controversial spill of water over the Columbia River dams—a spill that many scientists said was likely to kill more fish than it saved. The judge was not impressed.

It is anybody's guess how the courts will rule when the National Marine Fisheries Service issues its final salmon recovery plan. But that is precisely the point—we should not have to guess. There should be some sanity, some predictability, some balance in the ESA process.

Mr. President, we cannot wait any longer. We must have reform. We cannot simply go on funding ESA compliance activities in appropriations bills while ignoring the problems at hand. With many of my colleagues from impacted States, I am losing my patience.

I urge the administration and the leadership to move forward with reauthorization of the ESA—an ESA that treats human values as of at least equal importance as it does species values.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas [Mrs. HUTCHISON] is recognized.

Mrs. HUTCHISON. Madam President, are we in morning business?

The PRESIDING OFFICER. We are in a period of morning business.

THE WATER SUPPLY IN SOUTH TEXAS

Mrs. HUTCHISON. Madam President, we debated and passed unanimously my sense-of-the-Senate amendment to the Interior appropriations bill earlier this week. In my remarks I said, "Not since the Alamo has San Antonio and south Texas been under siege from a faraway Government as it is today."

In fact, the Edwards aquifer is the sole water supply of our Nation's 10th largest city, the city of San Antonio. It is also the very important water supply for a large area of south central Texas. It supplies the farmers and ranchers who create much of our food supply, and it is certainly important to the residents of all of the south central Texas counties.

I want to tell you the catch-22 that the people of south Texas are in because of the Endangered Species Act. The Sierra Club filed a suit to protect the five endangered species living in the Edwards aquifer. They are a blind salamander that is about a inch-and-a-half long, another salamander, and two fish of about that size.

The Edwards aquifer level is going down because we have not had enough rainfall in Texas this year. Only .3 of an inch of rain has fallen since May; normally, they receive 8 inches during this time.

So a Federal judge has said that, under the Endangered Species Act, we may have to limit pumping from the Edwards aquifer. The State legislature, which should have the power to settle differences over the water supply in this area did, in fact, come to a resolution by debating proposals from many counties, from the ranchers and farmers, from the city of San Antonio, and all of the people who depend on that Edwards aquifer. The State legislature created a board appointed by the elected officials, to monitor and determine how the water would be allocated. However, the Justice Department decided that the solution put forward with all of the people involved violates the Voting Rights Act.

We should permit the State and local government's solution to this problem to be put into effect. They do not need help from the Federal Government, or a Federal court to tell them what to do. But because we have had overregulation under the auspices of the Endangered Species Act, we have had Federal intervention.

So Texans are caught between the Justice Department saying that under the Voting Rights Act they cannot have a local resolution to this problem, because board appointed by elected officials replaces some directly elected public officials, and the Fish and Wildlife Service saying, as ordered by a Federal court, that they may have to limit pumping from the aquifer to protect Endangered Species.

What I think we ought to be doing is saying to the State and local government that this is your problem. You have found a solution, a solution that reduces dependence on the aquifer over the long term, and you do not need our help and advice. Most important, you do not need the Federal Government to intervene by limiting the water supply of the tenth-largest city in America, which would have a devastating impact on Air Force bases and on the farmers and ranchers throughout South Texas. But, nevertheless, that is what we have. We are caught in a catch-22.

The Senate passed my sense-of-the-Senate amendment to say let the State and local government handle this, and to say to the Secretary of the Interior that he should be looking for ways to minimize the economic damage and the damage to people in the solution to this problem. He should use his powers to grant an emergency incidental taking permit so that the local government can manage the water without being in violation of the Endangered Species Act.

We have too much Federal encroachment in the name of the Endangered Species Act. There is a second siege on a different specie that is happening simultaneously. The same Fish and Wildlife Service said publicly that they were looking at 33 counties in Texas, over 20 million acres, as the critical habitat of the golden-cheek warbler. This could limit the cutting of cedar, which is a tree that absorbs water in the ground. It takes the water from other crops and other uses that ranchers and farmers need it for. We are talking about restricting use of possibly 20 million acres for this one bird.

Madam President, it is time for us to put some common sense into the Endangered Species Act. The Edwards aquifer was down to a low level in the 1950's, and we were endangering this same fountain darter then, but they had a commonsense solution. They restocked the fountain darters from another spring in the aquifer, and they put them back where they had been before. The fountain darters flourished. The water level came back up naturally, and they have been there ever since.

That is common sense. And it also says that people matter, that economics matter, that jobs matter, that we have to have the ability to go forward with progress, with jobs, and with development, in addition to trying to save species in different ways. We need to consider putting them in safe places, by making sure that we protect them in another environment.

My colleague from the State of Washington has seen the spotted owl do terrible economic damage to a very important industry in his State. Similary, in east Texas we have a woodpecker that is severely hampering the timber industry.

We must keep the overly strict Endangered Species Act from hurting our country. It is do for reauthorization; I hope we will take it up soon. I hope that we will make commonsense amendments to the Endangered Species Act. But I also hope, Madam President, that we will have regulators that have common sense, that we will have regulators who say people are important in this process. Sometimes I think the only endangered species on this Earth that is not being protected is homo sapiens, and that is ridiculous. We must have commonsense solutions.

So I support my colleague from the State of Washington when he says we must take this bill up, we must reauthorize the Endangered Species Act with some commonsense amendments, and that means that we must include economic benefit analyses. We must make people part of the equation, we must make jobs part of the equation, and we must look at protecting species by putting them somewhere else; perhaps for a short period of time, perhaps for a long period of time.

But you know sometimes in nature a species does go extinct. It is survival of the fittest, and sometimes animals themselves kill each other off. Perhaps we can help, but to do that we might have to make more transfers.

I am not saying that I have all the answers, but I am saying we need to address this problem; I am saying that the problem involves making sure that people are part of the equation.

I am going to be here as soon as we can take up and consider the reauthorization of the Endangered Species Act, and I am going to try to make sure that the private property rights in our Constitution are absolutely adhered to, and that our people's property will not be taken without just compensation.

I appreciate the leadership of the Senator from Washington on this issue, and I look forward to seeing if we can put people in the equation once again.

Thank you, Madam President.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I ask unanimous consent to speak for not to exceed 10 minutes, if need be.

The PRESIDING OFFICER. Without objection, it is so ordered.

IN TRIBUTE TO HUGH SCOTT

Mr. BYRD. Mr. President, the U.S. Senate is a unique fellowship in which but a handful of men and women throughout the history of our country have been privileged to serve.

Mr. President, in my thinking, even retirement or electoral defeat do not sever the gossamer strand that ties a man or a woman to this incomparable assembly, and death itself cannot erase the indelible prints that membership in this body leaves on the Senate or on the memories and reputations left by those who have been addressed with the more than honorific title of "Senator."

These truths were again underlined these past few days when former U.S. Senator, Hugh Scott of Pennsylvania, passed away, full of years and memorialized in the hearts of those who admired and remembered him.

In every sense—bearing, intellect, manner, speech, political acumen, and instinct—Hugh Scott was a U.S. Senator.

Hugh Scott and I were both elected in 1958 to the U.S. Senate, and we, therefore, entered the Senate in the same class. Similarly, neither of us was a native of his adopted State—Senator Scott having been born in Virginia, and I having been born in North Carolina. Likewise, both Hugh Scott and I served simultaneously in the Senate leadership, he as the Minority Leader at the same time that I served as Majority Whip.

But Hugh Scott did not enjoy the electoral security that some Senators enjoy, with solid partisan majorities to back them through election after election.

Men's evil manners live in brass.
Their virtues we write in water.

(Mrs. BOXER assumed the chair.)

Some observers have asserted that Pennsylvania is, in truth, two States, with interests as varied, east to west, as Philadelphia and Pittsburgh are, one from the other.

Nevertheless, through three elections, Hugh Scott succeeded in straddling the Appalachian divide that carves Pennsylvania into two regional constituencies, adroitly compromising as successfully as have few politicians in the annals of American political history confronted by such divergencies.

Legislation is the art of the possible. Legislation is the art of compromise. When circumstances demanded it, Hugh Scott could be a politician's politician, staking out a common terrain between opposing positions, where others less perceptive might locate no terrain at all.

A committed ideologue might find little to praise in such a course, but, Mr. President, if politics is indeed "the art of the possible," then Hugh Scott was a master of possibility, for throughout his long and distinguished career in the Senate, again and again, he helped to create resolution in the face of seemingly overwhelming political odds.

Indeed, Senator Scott did not serve in a placid era in American history.

Review with me but a few of the political crags of that tenure: the assassination of President Kennedy; the Vietnam War; the 1964 election campaign; the civil rights struggle; the assassinations of Robert Kennedy and Martin Luther King, Jr.; the Watergate crisis; and the resignation of President Nixon, to pinpoint but a few dramas that beset our country during Hugh Scott's term in office.

That America survived that era is attributable to the wisdom of many people.

But I contend that Senator Hugh Scott contributed immeasurably, through his statesmanship and patriotism, to untangling the mesh and gridlock of that era, to lowering the wrangling voices, and to drawing citizens back to their central allegiance to the well-being of our country as a whole.

Madam President, I know that I speak for all of my colleagues, and especially all of my colleagues who knew him, and for our wives, for Erma, in extending condolences to the family and friends of Senator Hugh Scott on the occasion of their loss, and in again commending the people of the Commonwealth of Pennsylvania for their wisdom in lending the late Hugh Scott to America during a turbulent period in our national history.

Around the corner I have a friend,
In this great city that has no end;
Yet days go by, and weeks rush on,
And before I know it, a year is gone,
And I never see my old friend's face,
For life is a swift and terrible race.
He knows that I like him just as well
As in the days when I rang his bell
And he rang mine.
We were younger then,
But now we are busy, tired men,
Tired with playing a foolish game,
Tired with trying to make a name.
"To-morrow," I say, "I will call on Jim,
Just to show that I'm thinking of him."
But to-morrow comes—to-morrow goes,
And the distance between us grows and grows.

Around the corner!—yet miles away . . .
"Here is a telegram, sir, Jim died to-day."
And that's what we get, and deserve in the end:
Around the corner, a vanished friend.

Madam President, I yield the floor.

Mr. KERRY. Madam President, I ask unanimous consent that I be permitted to proceed for such time as I might consume in morning business.

Mr. KENNEDY. Madam President, reserving the right to object. Would my friend and colleague indicate how much time he is going to use? We have tried, in accordance with the majority leader's instructions, to set times to accommodate Senators. I would be glad to have a reasonable period.

Mr. KERRY. I think no more than about 15 minutes in total.

Obviously, if my colleague wants to proceed on the bill, I do not want to slow that up.

Does he have somebody with an amendment ready to go?

Mr. KENNEDY. Why do we not just try 10 minutes?

Mr. KERRY. Sure.

The PRESIDING OFFICER. Without objection, the Senator is recognized for 10 minutes.

STATUS OF THE WORLD'S FISHERIES

Mr. KERRY. Madam President, I would like to take this time to discuss an issue of grave concern to myself, my colleague from Massachusetts, the Senator from Rhode Island, and others. It is an issue of growing importance, not just to the United States but to countries all over the world; that is the increasing threat to the status of the world's fisheries and the management of our marine resources.

It was not long ago that most people thought that the supply of the ocean resources was inexhaustible. Since the end of World War II, the world's seafood harvests have multiplied nearly fivefold, growing from an annual global catch of about 18 million metric tons to a peak of nearly 100 million metric tons. Scientists tell us today, however, that we are currently harvesting close to the maximum that the oceans will support.

Since 1989, the United Nations Food and Agricultural Organization, known as the FAO, has reported that the world catch is in decline. Fishery statisticians tell us that they have seen a worldwide shift in catch to less valuable species, and most gains in the world harvest levels of the last 10 years have come from increased landings of smaller, lower value species, such as anchovies or mackerel.

Taking this fact into account, the decline in fisheries and the harvest of fisheries all across the planet is extremely alarming. There is one simple fact that every industrial nation needs to address—and not enough are—and that is there are simply too many fishing vessels chasing too few fish.

Even more telling is the fact that, today, despite a signficant increase in the number of vessels at sea and an increase in their fishing effort, there has been a decline in the world's catch. The size of the world's fishing fleets have increased three times in the last decade and modern vessels are now bigger and more efficient than those on the oceans 10 years ago.

Today vessels are equipped with extraordinary state-of-the-art electronics, including sophisticated satellite navigation. They often employ advanced fishing techniques, such as helicopter spotting. This increase in the number of vessels and efficiency has simply outstripped the capacity of the oceans.

Here in the United States, we are struggling to address the problem of overfishing off our own shores. Probably the best known example—and one of particular concern to myself and other New England Senators—is the collapse of the traditional groundfish stocks of cod and haddock in the North Atlantic.

Just last year, the Commerce Department had to implement a very draconian amendment, amendment 5, in order to reduce the amount of time that our fishermen can fish, and, as a consequence, we had to seek emergency economic aid to help those fishermen affected.

The failure of the longstanding New England fishery is having a devastating effect on the economies of coastal communities like Gloucester and New Bedford. I know the Senator from Rhode Island would agree that their fishermen are under enormous pressure, as would the Senator from Maine, our majority leader, and other Senators from other fishing States—California, Louisiana, the Carolinas, and others.

Last week, another traditional fishery in New England made the front page of the Boston Globe. The headline read, "Lobstermen hauling up empty traps; Many fear overfishing." The lobster is a venerated part of New England gastronomy and among our most unique and valuable natural resources. However, like many other New England fishing traditions, it could become part of our past, unless immediate steps are taken to strengthen the conservation of the stocks including more effectively limiting the amount of fishing effort. The answer to the question of who is responsible for the current sad state of our fisheries is not a simple one and has a long history. The New England lobster fishery, for instance, is subject to oversight and regulation by numerous State and Federal bureaucracies, including the State of Massachusetts, the State of Maine, the New England Fishery Management Council, Department of Commerce's National Marine Fisheries Service, and the Atlantic States Marine Fisheries Commission.

The length of the list will tell you why some fishermen say they are overregulated. The fact is, despite being overregulated, tough decisions have not been made; people who have been responsible for trying to curb the process have not done so; and most importantly, fishermen themselves, who for years under the management councils were given the responsibility to make the decisions to conserve, have not been conserving.

So the system has obviously failed. It has not just failed here, it is in great jeopardy in other parts of the world. We have factory ships off our coast that come from all parts of the world. They sit several hundred miles off the coast just outside of our 200-mile exclusive economic zone where they simply stripmine the oceans.

These are enormous problems. My hope is we can work together internationally to identify workable solutions. But we have to address the core of the problem, which is there are too many boats chasing too few fish all around the globe. In the last 20 years, the promise of profit from fishing and government-subsidized building programs by industrialized countries has overcapitalized the fleets in almost all fisheries of the world. I am told Iceland and the European Union could cut their fleets by up to 40 percent, and Norway could cut its fleet by 50 percent, and all three nations would still be able to maintain the fishery harvests at today's level.

That is an extraordinary statement. You could have 50 percent fewer Norwegian ships fishing and they could still come up with as much harvest as they have today.

The other interesting point to note is that, as nations have increased their efforts in an attempt to increase the catch, we have created a perversely uneconomical system, where the world's fleets are now operating at a loss. The FAO reports that in 1989 fishermen spent $92 billion to land $72 billion worth of fish. So not only do we have an uneconomic, perverse market, but we also have a market that is disappearing by virtue of the amount of fishing effort. The FAO now estimates that 13 of 17 major ocean fisheries are in trouble and that roughly 60 percent of the stocks which they monitor are fully utilized, overexploited, or depleted.

I think it ought to be clear to my colleagues why we should be concerned about this particular issue. Obviously, fish rank as one of the primary food sources in the world. There will be social and economic consequences of disastrous proportions if industrial fishing fleets are not controlled. We may have food shortages in developing countries worse than those we already witnessed, where fish already supply up

to 40 percent of the dietary protein. If we want to look at crises in the making that we should proactively be doing something to prevent, this is one of them.

Another concern is that we will lose the valuable renewable resource itself, and the associated economic opportunities that go with it. If managed properly, coastal fisheries are a sustainable industry that could be much more productive and much more profitable. But we are going to have to manage them properly in order to make that happen. Many of the most valuable species in the world's seafood markets are becoming harder to find and more costly as the fish stocks are depleted by pollution, by habitat destruction, and the relentless pursuit of the modern fishing fleet. This decline in population of fish has increased the competition among fishing nations for these particular resources.

Nations and fishing fleets have responded to the increased competition in various ways—not all of them positive. Coastal nations have extended their management authority to 200 miles. Now, with diminishing fish stocks, tensions between nations have risen. Just 2 days ago, Canada attempted to extend jurisdiction in the Atlantic beyond the 200 miles in a frustrated attempt to protect its fisheries resulting in the Canadians arresting two New Bedford, MA fishing boats. I believe the Canadians are wrong because the vessels were involved in harvesting scallops which are not a sedentary species as the Canadians claim and, therefore, do not fit under the little-used provision of customary international law that they have tried to make this arrest on. I have called on the State Department to take immediate action to obtain the release of these fishermen and to lodge a formal protest against the Canadian Government. Despite their actions, the Canadians have underscored the need for all countries to work together to protect the world's vital fish stocks. We need to work to make that happen.

In addition to the problems at our borders, distant water fishing fleets are now traveling the world, fishing legally and illegally in an effort to locate the dwindling stocks of valuable species such as bluefin tuna and swordfish. The race for these fish supplies has resulted in a dangerous worldwide trend in which routine fishing disputes are now escalating into major international incidents.

In the Mediterranean and on the high seas, violations of the U.N. moratorium on the use of large-scale driftnets are a continuing concern. The world united in 1992, thanks to the efforts of Senator STEVENS, myself, and the administration, with the United Nations, and banned the use of large-scale driftnets. But regrettably in the Mediterranean today, a large number of the Italian fishing fleet continues to use illegal driftnets, which are miles and miles of monofilament net that simply sweeps the ocean, entrapping all kinds of fish and other marine life. I am sickened to learn of their continued use in a desperate attempt to harvest the remains of once plentiful stocks. I am even more disheartened to hear reports that countries like Italy are attempting to take steps to legalize these activities in the world forum.

Today, the Commerce and State Departments should be put on notice that I and others intend to press for action under the High Seas Driftnet Fisheries Enforcement Act to identify and notify nations suspected of conducting large-scale drift operations. In addition, we must be prepared to implement trade sanctions should such nations not agree to cease their illegal activities. The administration cannot afford to drag its feet. I echo the sentiments of the Senator from Alaska with respect to illegal Italian driftnetters—"All we need is one. If we have one confirmed driftnet that exceeds the limit in use in the world, I think that we ought to tell the United Nations we are prepared to help enforce the moratorium." That says it all.

While worldwide depletion of fishery stocks is a very real threat, we must not underestimate our ability to address the problem. Nor must we fail to recognize that there are success stories on which we can build. First, despite the recent setbacks, we have made substantial progress in eliminating wasteful and destructive driftnets. Second, we now have in place a long-term agreement to allow U.S. tuna fishermen access to the rich tuna resources of the South Pacific. Third, the Senate currently is considering a new treaty and implementing legislation that will establish an international system to license, report, and regulate all vessels fishing on the high seas. Fourth, the United States recently joined with Russia and several other fishing nations to complete a new convention for managing fisheries in the central Bering Sea. Finally, although the condition of Atlantic bluefin tuna stocks is still a concern, I am optimistic that the U.S. investment in strengthening the International Convention for the Conservation of Atlantic Tunas [ICCAT] eventually will pay off in restoring depleted tuna stocks.

With respect to other international efforts now underway, I am encouraged by the efforts of the United Nations Conference on Highly Migratory and Straddling Fish Stocks, as well as FAO efforts to develop an international code of conduct for responsible fishing. Such a code will promote compatibility between the activities and economic interest of responsible fishermen and the ecological principles of conservation. Developing a set of guidelines is important, particularly to reduce overcapacity of world fishing fleets. Without effective efforts to reduce global fleet size, fishing vessels displaced from one fishery will continue simply to migrate to another fishery, often exacerbating overcapitalization problems already present. The heart of the problem is that, in order to prevent long-term environmental damage and develop renewable fisheries, governments must be willing to enforce rules and regulations that forgo short-term unsustainable economic gains and the political pressures that they bring.

The United States must exercise strong leadership in facing the challenge of building sustainable fisheries, not only in U.S. waters, but as a shared world heritage. We have a number of upcoming opportunities for demonstrating that leadership. First, we can complete action on a strong Magnuson Act reauthorization bill, ensuring the recovery and continued use of our domestic fisheries.

Second, I applaud the efforts of the administration to renegotiate the Law of the Sea Convention and look forward to reviewing those efforts when the treaty comes before the Foreign Relations Committee and the Senate. Third, I think the time has come to reexamine the issue of U.S. participation in the Northwest Atlantic Fisheries Organization [NAFO]. Finally, we must push for effective domestic and global enforcement of the existing agreements and treaties. Without firm enforcement in the coastal waters and on the high seas, all of our well-intentioned efforts will be for naught.

We are at a crossroads. We still have time to reverse the current trends and ensure that vital living marine resources are preserved. We must, however, be willing to take the difficult steps both domestically and internationally to move down the path toward creating sustainable global fisheries.

I simply call my colleagues' attention to this extraordinary growing crisis which we must show leadership in trying to resolve.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Madam President, I merely wanted to rise to congratulate the junior Senator from Massachusetts on his statement on fisheries. The fisheries today are being depleted, depleted, depleted, not only off New England, not only off the United States, but around the world.

I think the consciousness of that has to be impressed on all our people. In addition, there will be signatures on the Treaty of the Law of the Sea tomorrow, and this is very good evidence why a universal law of the sea will help in fishery regulations.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, just very briefly on the same issue, as my colleagues and friends Senator KERRY and Senator PELL have pointed out, we have had a very serious incident in which two boats from New Bedford were seized in Canadian waters in a legal dispute. The issue has not been resolved by the Department of State.

These boats are now being held by Canadian officials. That is a deplorable situation. If we are attempting to try to manage the George's Bank with our Canadian friends, this is just the wrong way for them to go about it. It may be politically popular in Canada to seize American ships before they are going to crack down on their own violations, but it is intolerable from the point of view of American men and women who, after consulting with the State Department, moved ahead to try to make a living.

This is a matter that I know many of us in New England are concerned about. I had the opportunity to talk with the American Ambassador to Canada, Tim Wirth, and I have been in touch with the Canadian Ambassador to the United States, to indicate that we find this to be an unacceptable, inappropriate type of behavior and we are going to work very closely with our President and the Secretary of State to try to address it.

The PRESIDING OFFICER. The distinguished Republican leader.

Mr. DOLE. Madam President, is leader time reserved?

The PRESIDING OFFICER. Leader time is reserved.

Mr. DOLE. Madam President, if I could take about 3 minutes of that?

The PRESIDING OFFICER. The Republican leader has that right.

WHITEWATER

Mr. DOLE. Madam President, as the Whitewater hearings get underway, the American people should understand that what they will be watching is a limited and tightly scripted account of only a small piece of the entire Whitewater puzzle. It is like going to a movie theater, paying $6 for a ticket, and getting to see only one 60-second movie preview. That is what this Whitewater hearing is all about.

Will the hearings examine the RTC's internal investigation into Madison Guaranty? No.

Will the hearings cover the Justice Department's handling of the RTC criminal referrals? No.

Will the hearings take a look at Paula Casey's delayed recusal from the Madison case and the David Hale prosecution? No.

Will the hearings cover the diversion of SBA funds to the Whitewater partnership? No.

Will the hearings examine why White House officials rifled through Vince Foster's office shortly after his death? No. Earlier this month, Mr. Fiske apparently changed his mind, telling Congress that his area of inquiry was off-limits, at least for now.

Will the hearings explore the activities of the Arkansas Development and Finance Authority? No.

Will the hearings take a look at whether any of Madison's federally-insured funds were used to pay off campaign debts? No.

And will the hearings examine the Whitewater transaction itself? You guessed it: The answer, of course, is "no."

During the past several months, independent counsel Robert Fiske has been masterful in his role as congressional traffic cop. He has commanded Congress when to go and when to stop, insisting that hearings take a back-seat to his own investigation and exercising an almost complete veto over congressional oversight in the process. To our own discredit, both the Senate and the House have willingly gone along with this charade.

In fact, when historians look back on the year 1994, they will see one of the few occasions in American history when one branch of Government, the Congress, willingly forfeited power to another branch, the executive. Mr. Fiske may be a fine person and a fine lawyer, but he is, without a doubt, one of the most powerful bureaucrats ever seen in American history.

Earlier this week, White House Counsel Lloyd Cutler insisted that no administration official violated any ethical standard as a result of the nearly 30 behind-the-scenes contacts in which insider information about the RTC criminal referrals was shared. Mr. Cutler's ethical dispensation may or may not be justified, but what is beyond dispute is that no ordinary American would have received the same preferential treatment. No ordinary American, cited in an RTC criminal referral, would have received the same advance-warning "head's-up" from the very people charged with conducting the investigation—from the very people charged with conducting the investigation.

And Madam President, if the contacts were on the up-and-up, as Mr. Cutler claims, what was their public purpose? What legitimate investigative goal were they designed to serve?

Madam President, I ask unanimous consent that two editorials—one from the Wall Street Journal and one from today's New York Times—be printed in the RECORD immediately after my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. DOLE. Madam President, I particularly call the attention of some of my colleagues to the editorial in the New York Times called "Censorship, Gonzalez Style." If you watched, as I did, the House hearings on C–SPAN, it was a disgrace. It was a total disgrace. I hope when the Senate Banking Committee starts hearings tomorrow, we will have some serious look at some of the problems.

We are not going to go away. We are going to continue to press for full hearings so the American people can make a judgment on the facts. The New York Times said maybe this is not a cover, maybe it is a question of which word you use. It is certainly an effort not to reveal anything. The majority in Congress is certainly responsible for it, and I think the American voters will know that between now and November.

EXHIBIT 1

CENSORSHIP, GONZALEZ STYLE

Henry B. Gonzalez, the Texas Democrat who heads the House Banking Committee, never really wanted to hold Whitewater hearings in the first place. Now that they are under way he seems determined to make them as unenlightening and unthreatening as possible.

Bowing to Robert Fiske, the independent counsel, Congress had already agreed to exclude the central matter in Mr. Fiske's continuing investigation—whether money from Madison Guaranty Trust, an Arkansas savings and loan, was improperly funneled into the Whitewater land venture or President Clinton's gubernatorial campaigns. That limited the committee to one question: Did Administration officials try inappropriately or unethically to rein in a Federal investigation by the Resolution Trust Corporation into Madison's collapse?

Mr. Gonzalez's devotion to this agreement was demonstrated Tuesday when a Republican asked if the Clintons had paid in full for their share of Whitewater. Lloyd Cutler, the White House counsel, appealed for protection from this important question, and Mr. Gonzalez speedily ruled that he did not have to answer. Mr. Gonzalez was within his rights to silence questions on Whitewater's "Arkansas phase." But the irascible Texan has twisted the already stringent rules to make it virtually impossible for members to develop a continuous, productive line of inquiry into even the narrow matter at hand.

First, he has awarded each member only five minutes of continuous questioning. Further, when a Republican finishes, he must yield to a Democrat and vice versa. This format will surely produce chaos when 10 White House officials appear simultaneously this afternoon, including George Stephanopoulos, Harold Ickes and Thomas McLarty. Republicans will want to know whether they tried to meddle with the R.T.C.'s supposedly independent investigations. But the Republicans will be hard put to mount a sustained cross-examination.

There are 51 committee members; it is therefore conceivable that someone like Jim Leach, the Iowa Republican who has spent the last eight months studying Whitewater, will have just one five-minute shot at 10 people—or 30 seconds per witness. Mr. Leach can "borrow" time from fellow Republicans willing to yield it. But before he uses the extra time, he must yield to a Democrat who could run the questioning off in a different direction.

Mr. Gonzalez is a partisan who believes that Whitewater is simply a Republican political sideshow. His efforts to protect the White House from sustained questioning place a special burden on Donald Riegle, a Michigan Democrat, to open up the Senate

hearings that begin tomorrow. They also oblige the Republicans to deploy themselves wisely in the future. They squandered valuable time on Tuesday complaining about Mr. Gonzalez's restrictions, rather than probing Mr. Cutler's odd assertion that he should be regarded as an objective investigator. On the first day, Mr. Cutler and especially Mr. Gonzalez got by with far too many nonanswers and thwarted questions.

THE FISKE HANGOUT

We don't recall offhand whether it was H.R. Haldeman or John Erlichman who suggested dealing with Watergate by a "limited, modified hangout." But the wonderful phrase captures the essence of the Whitewater hearings about to begin today—an exercise intended to create the illusion of openness while revealing as little as possible.

Provided essential political cover by independent counsel Robert Fiske's grandiose view of his own prerogatives, Congressional Democrats have officially limited the hearings to preclude such interesting areas of inquiry as Bill Clinton's Arkansas slush fund for legislative initiatives, Hillary Clinton's commodity trades, Dan Lasater's drug convictions and whatever happened at Mena airport. Questions will be allowed only on matters Mr. Fiske has already certified as nonindictable. Rep. Jim Leach estimated this at 5% of Whitewater. He lowered the number to 2% to 3% when Mr. Fiske declined to bless Congressional nosiness about the handling of Vincent Foster's office papers after his suicide.

The sliver of the case remaining, to be sure, is pregnant with embarrassment for the Administration. It concerns Washington contacts on the regulation of Madison Guaranty Savings & Loan, and press leaks over the past week depict an Administration with a progressive case of mutual recrimination. Will Deputy Treasury Secretary Roger Altman take the fall? Which of various high officials is lying? What did the President know and when did he know it? Amid the often contradictory denials by Washington officials, one thing should be kept in mind.

To wit, that investigators in the field clearly feel they were sat upon to suppress the Madison investigation. A proper investigation would start with RTC Kansas City attorney L. Jean Lewis, and work its way back up the chain of command. It would certainly include the handling of Madison by Paula Casey, the Friend-of-Bill implant as U.S. Attorney in Little Rock, and the circumstances of her appointment. Instead, the hearings will start with denials at the top and work down, maybe. As of yesterday, House Banking Chairman Henry Gonzalez had formally scheduled only one witness: White House 130-day counsel Lloyd Cutler.

To get a sense of the coverup being conducted, consider that Rep. Leach has felt it necessary to bring suit in federal court in an attempt to get documents on Madison from the Resolution Trust Corp. and Office of Thrift Supervision. Such documents were routinely provided to the minority banking staff in previous S&L scandals—Lincoln, Silverado, Centrust, Columbia and others. But when it comes to Arkansas, the supposedly independent regulatory agencies have gone into a protective crouch.

The ranking minority member of the House Banking Committee is entitled only, John E. Ryan of the RTC wrote Mr. Leach, to those documents "otherwise available to the public pursuant to the Freedom of Information Act." Mr. Ryan is the deputy in charge of the RTC after Mr. Altman recused himself. Jonathan Fiechter, longtime acting director of the OTS, took the same position. When Mr. Leach requested the documents for oversight hearings mandated by statute, Chairman Gonzalez wrote the regulators instructing them not to comply. Mr. Leach brought suit for the documents, and Judge Charles Richey is to decide whether the agencies can ignore the law if a chairman tells them to. Lawyers for the agencies now urge the court not to interfere in a dispute within the Congress.

What you have here, it could scarcely be clearer, is a Democratic Congressional majority protecting a scandal-ridden Democratic executive branch, and bending banking regulators to this purpose (assuming they need to be bent). The Congressional majority has a monopoly on Congress's right to learn the truth, lest the minority inform the voters. Judge Richey plainly understands the danger of this doctrine, but in oral arguments said he was troubled by an appellate precedent, even though I thought it was dead wrong then. I'll go to my grave thinking it's dead wrong.

Judge Richey, also, wrote Glenn Simpson in the July 18 issue of Roll Call, "denounced Whitewater independent counsel Robert Fiske for his efforts to limit the scope of the Whitewater hearings that will be held by the Banking Committee later this month, saying Fiske was infringing on constitutionally guaranteed Congressional rights and obligations." The Judge said directly, "I don't believe the independent counsel has the power to tell Congress what they have the power to look into, and when."

It is too much to hope, we suppose, that Judge Richey's view is held by the panel actually overseeing the independent prosecutor law—headed by Judge David B. Sentelle of the D.C. Circuit and including Senior Judges John D. Butzner Jr. of the Fourth Circuit and Joseph T. Sneed of the Ninth Circuit. Interestingly, however, they have not acted on Attorney General Reno's nomination of Mr. Fiske, forwarded July 1, a day after the signing of the new Independent Counsel Act.

That afternoon Senator Lauch Faircloth took the Senate floor to urge "a new, truly independent counsel," who might of course retain Mr. Fiske in some capacity. Senator Faircloth cited Mr. Fiske's involvement in defending Clark Clifford and Robert Altman in the BCCI case, in collaboration with Robert Bennett, the President's lawyer in the Paula Jones case. Also Mr. Fiske's firm representation of International Paper Co., which had land dealings with Whitewater Development. And Mr. Fiske's role in the appointment of Louis Freeh as FBI chief and his private legal work with former White House counsel Bernard Nussbaum. This is not a trivial list; in our own view no one with any role in BCCI should be appointed to anything until we know the full story.

Yet Judge Sentelle's panel should think even harder about whether it agrees with Judge Richey on the balance between prosecutorial and Congressional prerogatives, or whether it wants to endorse Mr. Fiske's view by reappointing him. Does the Judicial Branch really want to take responsibility for the farce about to unfold in Congressional hearing rooms and the nation's TV screens?

JUDGE INGE JOHNSON: BLAZING TRAILS FOR WOMEN LAWYERS

Mr. HEFLIN. Mr. President, in this day and age, when women make up nearly half the student population in our Nation's law schools and practice in large numbers throughout the country, it is hard to imagine a time when they were a rarity in the judiciary and the legal profession. Inge Johnson came on the scene at just such a time, and her story is one that has inspired many over the years.

When Judge Johnson came to the United States in the late 1960's, she had already earned a law degree from the University of Copenhagen in her native Denmark. With the help and guidance of then law school dean at the University of Alabama, Dan Meador, who is currently a professor at the University of Virginia Law School, Inge enrolled in Alabama's comparative law master's degree program in 1969. It was highly unusual to have a foreign student attending Alabama's law school, and this made her something of a curiosity. Dr. Meador remembers the other students being keenly interested in her background. She sparked great interest in the field of comparative law, and developed many close friendships. One of those friendships happened to be with a bright and personable young man from Tuscumbia, AL, by the name of Bill Johnson. This friendship ripened into a courtship and eventually marriage.

After completing the comparative law program at Alabama, Inge returned to Copenhagen, where she practiced law for a while, but soon returned to America to fulfill her dream of practicing here. However, she soon found that one of the requirements for admission to practice in the United States was to have a degree from an accredited American law school. Her determination was great, so she enrolled in the University of Alabama Law School for her juris doctor degree. When she finally received the degree, she had completed the equivalent of 7 years of legal education.

Mrs. Johnson then applied to take the bar examination, but soon found that she had yet another obstacle to overcome in her path to becoming a practicing lawyer in the States: She had to be a naturalized American citizen. She had previously applied for citizenship, but had to meet the residency requirement, which she would not meet for a few more months. The Supreme Court of Alabama came to her assistance by allowing her to take the bar exam since she demonstrated she would become a citizen shortly. After overcoming hurdle after hurdle, Mrs. Johnson became a full-fledged lawyer and shortly thereafter a full-fledged American citizen.

In 1973, Mr. and Mrs. Johnson returned to his hometown of Tuscumbia, AL. Bill's forebearers, particularly the Johnsons and Helen Keller's family, were among Tuscumbia's early settlers.

For many years, Inge was, incredibly, the only woman practicing law in all of northwest Alabama, and very possibly

the only one practicing north of Birmingham. She and her husband practiced law together for a number of years under the firm name of Johnson and Johnson.

Sixteen years ago, Inge was elected presiding circuit court judge of Colbert County, of which Tuscumbia is the county seat. Now in her third consecutive term, she did encounter some resistance when she entered the political arena in 1978, when some voters said she should be at home with her children and that a woman could not measure up to the demands of a judgeship. All this was said to a woman who had first gone to school in a country where half the practicing lawyers were women, and where it was not considered at all unusual for a woman to enter the profession. In spite of these sentiments, however, her abilities, qualifications, and determination allowed her to persevere and succeed. And attitudes have changed to the point where statements like this would be almost unheard of today. Besides, she has proven herself to be a nurturing and caring mother.

Inge Johnson and hundreds of other trail blazers like her have enhanced the legal profession in many positive ways that are difficult to measure. There is no doubt that they opened the doors through which some of the brightest legal minds have been able to enter and begin making valuable contributions to society.

I ask unanimous consent that an article appearing in the Times Daily, a daily newspaper for Florence, Muscle Shoals, Sheffield, and Tuscumbia, on the life and career of Judge Inge Johnson be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

JOHNSON PROMPTED CURIOSITY WHEN SHE ARRIVED

(By Robert Palmer)

TUSCUMBIA.—She didn't begin her law career with the intent to change the perception of female lawyers in the Deep South, but in a roundabout way, Inge Johnson did.

After 16 years on the bench as Colbert County's presiding circuit judge and a decade of experience in private practice in Denmark and Tuscumbia, Johnson believes her presence has had a positive effect on women entering the legal profession in the Shoals.

A native of Denmark, she came to Tuscumbia in 1973 after marrying William T. Johnson Jr., also a lawyer, whose family has had its roots in Tuscumbia since antebellum times. For several years, she was the only woman practicing law in Northwest Alabama and possibly the only woman practicing north of Birmingham.

She said she was surprised by the small number of women enrolled in the University of Alabama Law School when she enrolled there in 1969 to obtain a comparative law degree. In her native Copenhagen, where she had already earned a law degree, almost half the practicing attorneys were women, and it was not considered unusual for a woman to enter the legal profession, she said.

"It didn't dawn on me that being a female in law would be different here, but it was," she said.

After earning a juris doctorate from Alabama, she moved to Tuscumbia with her husband, and they entered practice together. She said her appearance in the courtroom of a Deep South steeped in old traditions attracted curiosity from her male peers rather than hostility or quiet discrimination.

"My peers did not discriminate, though I was worried about it," she said. "They were more surprised than anything else. It was not like trying to break into a fraternity."

However, she soon became frustrated. Her daytime hours were devoted to her work, at night, her time was spent with their first child. Two more would follow over the years.

Johnson said she was in a Colbert judge's office one afternoon and complained that she wasn't hearing the lawyer "gossip" she needed to know because she was not well-known. She also expressed frustration because she did not mingle socially very often with other women because she was devoting her time to establishing her practice.

A seasoned Tuscumbia attorney in the judge's office at the time laughed and told her he would keep her posted on all the "good gossip," she said.

"And he still does to this day," she added.

When she ran for election as judge, her gender became an issue in the campaign, though she said she had hoped to avoid it as unimportant.

WOMEN HAVE EARNED RESPECT

Over the years, she has talked with many area high school students interested in the law profession, especially girls.

"I hope that I've inspired them in some way," she said. "A law career ties in well with family values."

The acceptance of women in law in the Shoals can be attributed to a number of things, she said.

"There have never been any radical feminist lawyers around here. All those I've dealt with have been very cordial and professional. There has been no sticking together and fighting their male colleagues," she said.

"What has characterized women attorneys here is competency, capability and respect. That encourages respect from their male colleagues," she said. "They (women) are darn good attorneys first."

IT IS EASIER TO PREVENT DISEASE THAN CURE IT—PREVENTION IS BASIC TO HEALTH REFORM

Mr. KENNEDY. Mr. President, as we turn our full attention to health care reform, it is important for all of us to remember that it is easier to prevent disease than to cure it. Universal coverage is essential to prevention. Without it, preventive services will not reach many of those most in need.

This idea is so simple and so obvious that it often gets lost in the complex debate on health reform. Prevention is good health policy and good economic policy. It is the stitch in time that saves millions and billions—millions of lives and billions of dollars. Preventive techniques can stop epidemics before they start, or stop them after they begin. Imagine the difference it will make to the Nation if we develop more effective ways to prevent cancer and heart disease, or prevent an epidemic that would kill millions, or prevent low birthweight babies.

We have the potential today, through our community-based, public health care system, to accomplish much of this and more. To succeed, prevention must be a central part of our health system, and it will be under genuine health reform.

To achieve a healthier America, over 130 organizations of business leaders, policy-makers, health-care professionals, academicians, and researchers have agreed on five key prevention principles which should be included in health reform. I ask unanimous consent that this consensus statement may be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

PREVENTION IS BASIC TO HEALTH REFORM
CONSENSUS STATEMENT

Universal access to health and medical care is essential. Without it, preventive services may not reach those most in need. But prevention must be an integral part of our health system, if we are to seriously progress toward reducing the toll of preventable disease and injury and saving taxpayer money. As the debate over health reform intensifies, business leaders, policy-makers, health-care professionals, academicians, and researchers have forged a national partnership to support prevention's health system role. The following key steps should define that role in health reform legislation.

All standard benefit packages should include full coverage of clinical preventive services and appropriate prevention counseling and education.

Stable and adequate funding should be provided to revitalize and support community-based preventive services as well as core public health activities. Funding must include the training and education of public health professionals and support for service delivery infrastructure.

Federal prevention coordination processes should be established to ensure that investments to improve the public's health are based on the best evidence from research and population health data. This may be done through structures such as expert panels addressing (a) clinical preventive services, including benefit plan revisions, (b) community-based preventive services, and (c) prevention-oriented social and economic policies.

A coordinated, confidential public-private data system should be established to assess Americans' health and measure its improvement. The system would identify the most cost-effective means of data collection, and would release only aggregate information, not personal data. Population-based data, gathered across all economic and ethnic groups, would include information on health plans, community health needs, health status, quality of care, etc. This would allow measurement of health outcomes, effectiveness of services, and national changes in health status and health risks.

An incentive-based system should be established to reward employers who successfully implement qualified disease prevention, health promotion and safety programs, and to provide incentives to health plans to improve the health of the communities they serve. Incentive programs should be adaptable by the size and function of different employers.

SIGNATORIES TO THE CONSENSUS STATEMENT

Aetna Health Plans.
AIDS Action Council.
Alliance for Aging Research.
Alliance To End Childhood Lead Poisoning.
Ambulatory Pediatric Association.
American Academy of Pediatric Dentistry.
American Academy of Pediatrics.
American Academy of Orthopedic Surgeons.
American Association for Dental Research.
American Association of Colleges of Nursing.
American Association of Colleges of Pharmacy.
American Association of Dental Schools.
American Association of Occupational Health Nurses.
American Association of Public Health Dentistry.
American Cancer Society.
American Clinical Laboratory Association.
American College Health Association.
American College of Nurse-Midwives.
American College of Occupational and Environmental Medicine.
American College of Physicians.
American College of Preventive Medicine.
American College of Sports Medicine.
American Council for Drug Education.
American Council of Life Insurance.
American Dietetic Association.
American Heart Association.
American Lung Association.
American Medical Student Association.
American Nurses Association.
American Optometric Association.
American Pediatric Society.
American Physical Therapy Association.
American Podiatric Medical Association.
American Psychological Society.
American Public Health Association.
American Running and Fitness Association.
American Speech-Language-Hearing Association.
Arkansas Department of Health.
Association for Health Services Research.
Association for Worksite Health Promotion.
Association of Academic Health Centers.
Association of Junior Leagues International.
Association of Maternal and Child Health Programs.
Association of Medical School Pediatric Department Chairmen.
Association of Reproductive Health Professionals.
Association of Schools of Public Health.
Association of State and Territorial Health Officials.
Association of State and Territorial Public Health Laboratory Directors.
Association of Teachers of Preventive Medicine.
Association of University Programs in Health Administration.
Blue Cross of Western Pennsylvania.
Bureau of Public Health, West Virginia Department of Health and Human Resources.
Campaign for Women's Health.
Catholic Health Association.
Cecil G. Shaps Center for Health Services Research, University of North Carolina at Chapel Hill.
Center for Consumer Health Education, Inc.
Center for Corporate Public Involvement.
Center for Science in the Public Interest.
Center for the Advancement of Health.
Central States Health & Life Co.
Citizens For Public Action on Blood Pressure and Cholesterol, Inc.
Colorado Department of Public Health and Environment.
Community Health Accreditation Program.
Connaught Laboratories.
Council for Responsible Nutrition.
Division of Health Promotion, Bureau of Public Health, West Virginia.
Employee Assistance Professionals Association.
Every Child By Two.
Florida Department of Health & Rehabilitative Services.
Georgia Division of Public Health.
Health Decisions, Inc.
Health Education Center, Inc.
Health Industry Manufacturers Association.
Health Insurance Association of America.
Health Management Corporation.
Health Net.
IBM Corporation.
Institute for Advanced Studies in Immunology & Aging.
Institute of Science, Technology & Public Policy.
Johnson & Johnson Advanced Behavioral Technologies, Inc.
Kansas Department of Health and Environment.
Lederle-Praxis Biologicals.
Mississippi State Department of Health.
Missouri Department of Health.
National Association For Public Health Policy.
National Association of Black County Officials.
National Association of Community Health Centers.
National Association of Counties.
National Association of County Health Officials.
National Association of Meal Programs.
National Association of Nurse Practitioners in Reproductive Health.
National Association of School Nurses.
National Association of Social Workers.
National Association of State Universities and Land Grant Colleges.
National Business Coalition on Health.
National Black Caucus of State Legislators.
National Black Nurses' Association, Inc.
National Council on Family Relations.
National Family Planning and Reproductive Health Association.
National Foundation for Infectious Diseases.
National Hispanic Council on Aging.
National League for Nursing.
National Mental Health Association.
National Multiple Sclerosis Society.
National Nurse Practitioner Coalition.
National Osteoporosis Foundation.
National Organization on Fetal Alcohol Syndrome.
National Public Health Information Coalition.
National SAFE KIDS Campaign.
National Women's Health Network.
Nevada Division of Health.
New Mexico Department of Health.
New York State Association of County Health Officials.
Older Women's League.
Partnership for Prevention.
Public Health Information Services.
Public Voice for Food and Health Policy.
Prudential Center for Health Research.
Society for Pediatric Research.
South Carolina Department of Health and Environmental Control.
Society for Adolescent Medicine.
Sporting Goods Manufacturers Association.
Summit '93 Health Coalition.
The Congress of National Black Churches, Inc.
The National Black Caucus of State Legislators.
The National Council on the Aging's Health Promotion Institute.
The Society of Behavorial Medicine.
Voluntary Hospitals of America.
Washington State Department of Health.
Worksite Health Promotion Alliance.
YWCA of the U.S.A.

TRIBUTE TO DR. RICHARD GIBB

Mr. KEMPTHORNE. Mr. President, it is with sadness that I note the passing of the former president of the University of Idaho, Dr. Richard Gibb, who died this weekend at the University of Washington Medical Center at Seattle after a brief battle with cancer.

Dr. Gibb is probably best known for successfully guiding Idaho's land-grant university through a difficult financial period. Facing high inflation and a tax limiting measure when he first became U of I president in 1977, Dr. Gibb was still able to develop and implement a core curriculum that earned national recognition for excellence.

He successfully competed against nationally recognized engineering institutions and universities and was awarded a major project by National Aeronautics and Space Agency grant to develop special microchip technology to be used by NASA in guidance systems and to correct computer errors in space. He created the Lionel Hampton School of Music and the college of art and architecture, and led a celebration of the institution's 100th birthday that touched every corner of the State and garnered more than $40 million in donations.

His tenure as president was marked by several major campus construction projects, including the Kibbie Activity Center East End Addition, the J.M. Martin Agricultural Engineering Laboratory and the new wing of the life sciences building, which was named in his honor last year.

Dr. Gibb stepped down from the presidency in 1989 to return to teaching. In the classroom, he was known for actively engaging students in discussions about real life experiences and was available to them outside the classroom as well.

He was active in the Moscow Kiwanis Club, and was also a member of numerous professional and scholarly organizations. Dr. Gibb was an enthusiastic participant in a variety of events at the university.

Dr. Gibb, and the contributions he made to the University of Idaho and the opportunities he provided to Idaho's young people will be greatly missed.

CRIME

Mr. DOLE. Mr. President, earlier this morning, the crime conference completed its deliberations. Unfortunately,

it appears that parts of the conference report could have been concocted by a university sociology department, rather than by those concerned with effective law enforcement.

The conferees have apparently resurrected last year's defeated stimulus package by earmarking a staggering $9 billion for more than 15 so-called prevention programs. Midnight Basketball, the Ounce of Prevention Council, drug courts, the Local Partnership Act, the Model Cities Intensive Grants Program—these are just several of the multimillion-dollar pork-barrel projects that are masquerading under the anticrime banner.

On Tuesday, Republican conferees successfully earmarked $3.6 billion for the Edward Byrne Memorial Grant Program, which provides critical assistance to State and local law enforcement, the very people who are on the front lines in the war against crime. Yet, a mere 24 hours later, the Democrat conferees reversed this success, stripping the Byrne Grant funding and tossing it in the prevention pork barrel.

Unfortunately, several important tough-on-crime proposals that passed the Senate last year also didn't make the final conference cut:

New Federal rules of evidence making it easier to prosecute vicious sex offenders. Gone.

Tough mandatory minimum penalties for those who use a gun in the commission of a crime. Gone.

New legal tools designed to assist Federal prosecutors in combating violent gang activity. Gone.

The Terrorist Alien Removal Act, which would have made it easier to deport vicious terrorists who are in our country illegally. Gone.

The mandatory HIV testing of those charged with sex offenses. Gone.

And a proposal requiring violent criminals to make restitution to their victims. Believe it or not, gone.

Many of the tougher provisions are gone.

But, perhaps the biggest cut of all, Mr. President, is in the area of prison funding. Although the House of Representatives authorized $10.5 billion to help the States create more prison space for violent criminals, the conference report takes a far softer approach, reducing the level of prison funding and loosening up the truth-in-sentencing requirements.

And, Mr. President, there are gimmicks: more than $2 billion of the money allegedly allocated for prisons is not financed through the Violent Crime Reduction Trust Fund. So, it is anyone's guess if this funding will ever be appropriated or ever reach the States, where it is needed.

Mr. President, I will take a close look at the final conference report, but from what I see so far, I am afraid that Congress may have just flunked its most important crime fighting challenge, as we have done in the past. From all appearances, we have done just that.

I yield the floor.

IS CONGRESS IRRESPONSIBLE? YOU BE THE JUDGE OF THAT

Mr. HELMS. Mr. President, anyone even remotely familiar with the U.S. Constitution knows that no President can spend a dime of Federal tax money that has not first been authorized and appropriated by Congress—both the House of Representatives and the U.S. Senate.

So when you hear a politician or an editor or a commentator declare that "Reagan ran up the Federal debt" or that "Bush ran it up," bear in mind that it was, and is, the constitutional duty and responsibility of Congress to control Federal spending. Congress has failed miserably in that task for about 50 years.

The fiscal irresponsibility of Congress has created a Federal debt which stood at $4,634,714,547,116.98 as of the close of business Wednesday, July 27. Averaged out, every man, woman, and child in America owes a share of this massive debt, and that per capita share is $17,777.21.

TRIBUTE TO LARRY ARGIRO

Mr. SARBANES. Mr. President, I rise today to pay tribute to Mr. Larry Argiro, a longtime Federal servant and creative leader in acoustics research and design for the U.S. Navy. Mr. Argiro recently retired after a remarkable 47 year career, and we in Maryland will truly miss his leadership and technical expertise at the Naval Surface Warfare Center, Carderock Division, Annapolis Detachment [NSWC].

Larry Argiro began his career with the Navy in 1947 as a P–1 electronics engineer and immediately became involved in noise reduction research. From the start, Mr. Argiro demonstrated a strong commitment to assisting the Navy in meeting the increasing need for acoustic technologies in the post-World War II era, a time when the submarine was fast becoming an integral part of our Nation's approach to naval warfare strategy. In the years since, Mr. Argiro has immersed himself in this growing demand for acoustic technology by devoting his enthusiasm, creativity, and an exceptional technological knowledge to enhancing Navy submarines, nuclear submarines and antisubmarine warfare ships.

Mr. Argiro took over as head of the trials and analysis branch at Annapolis in 1963, where he and his staff of over 50 scientists and engineers conducted various research projects and developed innovations in acoustic signal processing and machinery noise technology. Three years later, Argiro was named director of the machinery silencing division at the Center where he spent 21 years managing 100 engineers in noise reduction research for nuclear submarines and antisubmarine warfare ships. Larry's colleagues and supervisors not only attest to his tremendous commitment, but also to the number of important breakthroughs in acoustics technology that emerged from the Annapolis laboratory during his tenure as director of the machinery silencing division.

In 1986, Mr. Argiro assumed the leadership of the machinery research and development directorate in the Center's propulsion and auxiliary systems department. There, he not only maintained his pattern of outstanding progress in machinery dynamics and silencing, but he also became involved in several other important innovations and projects including the analysis and design of new power systems, ship automation control, shipboard energy availability and conservation, electrical integration, and electric and magnetic sensing.

During Larry's tenure, the Machinery Research and Development Department at the Naval Surface Warfare Center has developed a substantial portion of the most advanced, environmentally sound, and affordable machinery for surface ship combatants and submarines in the world.

I have had the chance to get to know Larry through working and visiting with him on several occasions at the Annapolis laboratory. I know firsthand of his commitment to preparing the Navy for the 21st century and I am pleased to have this opportunity to express my appreciation for his incredible depth of knowledge and gracious demeanor. His career is certainly one marked by achievement and I know his leadership will be missed.

THE REASSIGNMENT OF COLONEL WASHABAUGH, AIR FORCE LEGISLATIVE LIAISON

Mr. MACK. Mr. President, I rise today to recognize an individual who has provided outstanding support and assistance to the U.S. Congress. Col. Mark Washabaugh, Office of the Secretary of the Air Force, legislative liaison, Inquiry Division, was reassigned from the Pentagon to Randolph AFB, TX, on May 31, 1994. Many of my colleagues and I have directly benefited from his exceptional service in the Air Force's congressional inquiry office.

As a branch chief in the Inquiry Division, Colonel Washabaugh demonstrated the utmost competence and efficiency in handling a variety of unique situations and constituent concerns. His skillful leadership resulted in the successful resolution of numerous cases during an 18-month tour.

A seasoned traveler, escorting myriad congressional members and their

staffs, Colonel Washabaugh upheld the highest standards of professional conduct. His thorough and efficient planning assured these trips were a complete success.

Mr. President, I congratulate Colonel Washabaugh for a job extremely well done and wish him the very best in the future. His commitment to excellence brings great credit upon himself and the U.S. Air Force.

TRIBUTE TO CHRISTOPHER FISH

Mr. D'AMATO. Mr. President, I rise today to pay tribute to Christopher Fish. Christopher Fish joined my staff in October 1991 after having worked as an intern. During his tenure in my office he worked in the mailroom and later became my executive assistant and intern coordinator. His service and loyalty to me was invaluable. Chris will be leaving our staff to attend Syracuse University Law School. My best wishes to Chris as I know his future will be a bright one. Mr. President I would like to submit the following comments in the CONGRESSIONAL RECORD from members of my staff.

Chris: Based on my experience, you will encounter many high pressure, stressful situations during law school and as a practicing attorney. There will be countless times when you would gladly give your last dollar to be anywhere else. Let me assure you, though, nothing will compare with your experience in trying to find Dulles Airport with the Senator that Friday afternoon! We'll miss you. Best wishes.—Phil Becthel

Chris Fish is a person that leaves a positive impression on most people he meets. My first encounter with Chris was in January 1994 when I started my fellowship in Senator D'Amato's office. Chris was one of the first people I met and as he worked in the desk next to mine, he taught me how to get the job done efficiently and effectively. His mere presence, hard work and dedication flows from his persona and fills the office in a productive manner. Many times I witnessed his unique ability to focus on the highest priority tasks at-hand despite the many distractions. I am glad to have the opportunity to work with him. I know he will continue to make us proud.—Manny Cappello

From interns to staffers we have had many fun times, and some very trying times, but things have seemed to always work out in the end. The years have flown by so quickly. It was only yesterday that we started as interns with David, Megan and "Big Red", but things change and people move on. It is easy to let friendships fade away so let's work hard to prevent that from happening. When you are studying late at night just remember we are probably still at our desks pulling the late shift. Don't forget us little people and that the road to Syracuse Law School begins at the Dulles Toll Road. Good luck.—Mike Giuliani

Chris Fish, what a "class act!" It was a pleasure to be one the same team with you. My days here in the office were brighter only because of your presence, which I will sorely miss. My very best wishes to you in all of your future endeavors.—Tina Gray

CF—Remember the trips: Where is this place, again? Claudia needs a what? Doesn't Design Cuisine deliver? This treadmill looks fine. Why don't we take Salamone, so we don't get a ticket? Senator, we've crossed border into West Virginia, now what? You want me to drive over what?! Claudia, the car needs brakes, a battery, a radiator, new taillights, new tires, and there's something wrong with the phone. You are the man. Good luck and let's go Orange!—Joe Kolinski

The good time, fun loving role that Chris played in the office will be hard to replace. His sense of humor made the long work days easier to get through. He was a good coworker and an even better friend. I wish him the best of luck in Law School and beyond. Drop by often!—Rich Mills

When I arrived in Washington to begin my internship in Senator D'Amato's office I did not know anyone in the entire city of Washington, D.C. let alone my new office. But thanks to Chris, who accepted me as an intern, the transition to a strange city and a new environment was made exceptionally easy. Chris was always available to answer questions and his friendly demeanor was ever-present. I soon came to value the friendship of Chris and to this day I owe a great deal of gratitude to him. The absence of his presence in our office will certainly be felt, and I wish only the best in all of his future endeavors.—Rob Ostrander

In January of 1992 I started as an intern for Senator D'Amato. The first person in the office that opened up to me was Chris Fish. This became symbolic for how Chris was as a person. He was more than a fellow staff member and good friend. He had that rare quality of walking into a room and getting everyone motivated to do something. A lot of the staff looked to Chris as a catalyst for action. He reached out to many and was great at organizing and hosting many of the office social events. He was a good friend who will be missed by our office. I know that in law school he will bring the same energy and enthusiasm to the people around him that he brought to our office. Chris thanks for being a truly unique individual. We will miss you.—Roger Panetta

Good luck in your future. Your service will not be forgotten.—Mike Petralia

Chris Fish came to us a few years ago eager to learn, ready to help, and willing to give his best. Over the years, these are the qualities that have gained him the respect and admiration of his friends and colleagues. It is no doubt that Chris will do well as he pursues a law degree and that he will excel in the years to come. I wish you well, Chris, and we'll all miss you.—Peter Phipps

When it is Saturday night and you have been studying tort reform for nine hours just remember one thing * * * You're the man!! Good luck kid.—John Salamone

There is a certain bond that grows out of standing in the mail room together. It can't be explained, and no one should try. Chris Fish is a great friend. There are many times when he was there to help me out of tough spots, and I will always be grateful for his friendship. Good Luck.—Kraig Siracuse

When I first came down to Washington and didn't know anybody he made sure I was part of the group. I'm not sure that was a good thing, but thanks for doing it. Thanks also for your help in coordinating the schedule when our paths collided. Best of luck at Syracuse. Remember—it's tort, not tart.—Harvey Valentine

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, what is the pending business?

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

IMPROVING AMERICA'S SCHOOLS ACT OF 1994

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1513, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1513) entitled the "Improving America's Schools Act of 1994."

The Senate resumed consideration of the bill.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

AMENDMENT NO. 2418

(Purpose: To provide local school officials control over violence in classrooms and on school property, and for other purposes)

Mr. GORTON. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mr. GORTON], for himself, Mr. LIEBERMAN, Mr. BURNS, Mr. CRAIG, Mr. BOND, Mr. MURKOWSKI, and Mr. BENNETT, proposes an amendment numbered 2418.

Mr. GORTON. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of title IV, insert the following:

SEC. . LOCAL CONTROL OVER SCHOOL VIOLENCE.

(1) IN GENERAL.—In any school that receives Federal funds, if a student brings to or possesses on school property or at a school-sponsored event a weapon as such term is defined in, and in contravention of, school policy, or has demonstrated life threatening behavior in the classroom or on school premises, then the student shall be subjected to the disciplinary actions as determined by the local educational agency.

(b) INDIVIDUALS WITH DISABILITIES.—Paragraph (3) of section 615(e) of the Act (20 U.S.C. 1415(e)(3)) is amended—

(1) by striking "During" and inserting "(A) Except as provided in subparagraph (B), during", and

(2) by adding at the end the following new subparagraph:

"(B)(i) Except as provided in clause (iii), if the proceedings conducted pursuant to this section involve a child with a disability who brings to or possesses on school property or at a school-sponsored event a weapon as such term is defined in, and in contravention of, school policy, or a child with a disability who has demonstrated life threatening behavior in the classroom or on school premises, then the child may be placed in an interim alternative educational setting for not more than 90 days.

"(ii) The interim alternative educational setting described in clause (i) shall be decided by the individuals described in section 602(a)(20).

"(iii) If a parent or guardian of a child described in clause (i) requests a due process hearing pursuant to paragraph (2) of subsection (b), then the child shall remain in the alternative educational setting described in such clause during the pendency of any proceedings conducted pursuant to this section, unless the parents and the local educational agency agree otherwise.".

(c) SUNSET PROVISION.—This section, and the amendments made by this section, shall be effective during the period beginning on the date of enactment of this Act and ending on the date of enactment of an Act (enacted after the date of the enactment of this Act) that reauthorizes the Individuals With Disabilities Education Act.

(D) DEFINITIONS.—For the purposes of this section, the term "life threatening behavior" is defined as "an injury involving a substantial risk of death: loss or substantial impairment of the function of a bodily member, organ, or mental faculty that is likely to be permanent; or an obvious disfigurement that is likely to be permanent."

Mr. GORTON. Madam President, this amendment is presented on behalf of myself and the distinguished Senator from Connecticut [Mr. LIEBERMAN].

I ask unanimous consent that Senators BURNS, CRAIG, BOND, MURKOWSKI, and BENNETT be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GORTON. Madam President, during the final vote on Goals 2000, after the conference committee on that bill had summarily dropped a school violence amendment which I proposed and which was accepted by the Senate, I vowed to press for legislation during the next education bill to come before the Congress to make it safer to walk the halls and sit at the desks of our Nation's schools.

On behalf of parents, educators, and students, I am here today to fulfill that promise. Violence is tearing our society apart and is destroying educational opportunities for America's young people.

It is time we took the steps necessary to regain control of our Nation's schools. In Washington State, for example, violent crimes by youths have doubled in number in the past decade, despite a 3-percent reduction in the youth population. Our superintendent of public instruction recently released her annual report of weapons in Washington State schools for the 1992–93 school year. A total of 2,237 incidents of possession of firearms or dangerous weapons on school premises were reported by school districts and approved private schools.

The prevalence of such incidents is constantly increasing, as is the variation and types of weapons. We must address this problem now. We must ensure the safety of our children in school and provide a learning environment free of violence and disruption.

According to the national crime survey, each year nearly 3 million thefts and violent crimes—1 crime every 6 seconds—takes place on or near school grounds. The same study suggests that 67 out of every 1,000 teenagers are victims of a violent crime each year.

I have a strong personal stake in the debate over education reform and school safety. My wife, Sally, and I have just been blessed with the birth of our sixth grandchild. As a grandparent, I am deeply apprehensive about their safety in our schools and on our streets. Perhaps in the Halls of Congress we can feel immune from what is going on in our local communities. The threat of violence in our schools and communities is tragic. While we in Congress simply debate this issue, teachers, and school officials have lost the right to control their classrooms. Violent and disruptive students who prevent others from learning cannot be disciplined effectively by reason of Federal rules and for fear of lawsuits.

According to the Washington State Parents and Teachers Association, Federal regulations make it difficult to create a safe, orderly environment in our schools. Educators are unreasonably hampered when they try to prevent or reduce violence. They find that Federal regulations inhibit their ability to design and implement commonsense discipline in their schools. This call for reform came through loud and clear earlier this year in a statewide education conference I held in Fife, WA. The primary concern expressed to me by the almost 200 parents, teachers, principals, students, business people, and other community leaders was the growing problem of violence in our schools.

The participants urged the need to get the Federal Government off the backs of local educators and to let them do their jobs. Educators must be allowed adequately to address the problems of violent and criminal behavior in their schools. They must be able to restore discipline and reduce violence in our schools and in our communities. It is time for us to make school violence a top priority and to stop inhibiting its suppression. We must regain control of our classrooms now. We can begin by giving the authority to school officials to do their jobs.

Madam President, this local-control-over-school-violence amendment, cosponsored by Senator LIEBERMAN and several others at this point, does just that. It increases the authority of the educators and our local schools to address serious disciplinary problems. Today, our education system provides a dual system of discipline. Some students who are involved in bringing dangerous weapons to class or who demonstrate life-threatening behavior are properly disciplined while others are not.

It is destructive and discriminatory to have one set of rules for regular students and another for special education students protected under the Individuals With Disabilities Education Act. This sends an unclear and unfair message to all our students. Educators in Washington State emphasized to me that the stay-put provision of section 615 of the Individuals With Disabilities Education Act is a source of discontent and frustration. These educators who deal with disciplinary problems on a daily basis tell me that their hands are tied by the stay-put provision.

The stay-put provision in part B of IDEA was established to protect the educational placement of students with conditions that require them to receive special education and related services. It established a mechanism to place students in an educational program within the school system. Once placed, the student cannot be removed for more than 10 school days without parental consent or unless the school obtains a court injunction for a permanent change in placement for the student.

Court interpretations of a well-intended provision of the Individuals With Disabilities Education Act make it extremely difficult to remove or suspend any IDEA protected student from the classroom more than 10 days without lengthy and expensive special hearings. The protections for IDEA students were created in 1975 when acts of violence that occur in today's schools across the Nation could not have been imagined. Today's reality combined with these IDEA protections leave all students, including others with disabilities, and teachers at risk.

In 1988, the U.S. Supreme Court ruled in Honig versus Doe that public schools may not expel or remove disruptive, emotionally disturbed children from their classes for more than 10 days, even to protect others from physical assault, unless they get permission from the parents or a judge. The decision, of course, is based on IDEA, not on the Constitution. If we amend the Individuals With Disabilities Education Act, as this amendment does, Honig versus Doe becomes irrelevant.

The stay-put provision in the Individuals With Disabilities Education Act makes it difficult to remove from the classroom a student with a disability who has attacked a teacher or a student or who has brought a weapon into the classroom. The reasoning behind the provision—to protect students with disabilities from having their educational placement changed without regard to their individualized education plan—is impossible to defend when the disabled student threatens the life and safety of other students and teachers. These 1975 protections were enacted at a time at which it could not have been known students would be bringing dangerous weapons into the classroom. School safety is seriously jeopardized by this rule now that guns and violence are widespread.

To my colleagues, I implore you to join with me in confronting this dual system of discipline in our schools. By

supporting this amendment, we will be providing educators with tools to remove from the classroom seriously violent students who are currently protected from this change of placement under IDEA. Rather than having to readmit a student after the statutory maximum 10-days waiting period or obtain a court injunction, educators will have the authority to place such a student in an interim educational program until the school district determines the appropriate educational placement, which it must do within 90 days.

This "local control over school violence" amendment applies to all students, not just to those with educational disabilities. It increases the disciplinary power of our local school officials to deal with weapons offenses and life-threatening behavior. The section addressing the Individuals With Disabilities Act makes it permissible immediately to remove a student who brings to a school or a school-sponsored event a weapon that violates school policy. It also allows the removal of a student who has demonstrated life-threatening behavior in the classroom or on school premises. It requires that the child be moved and put in the interim alternative setting until a decision is reached. If parents call for a due process hearing, the child stays in the interim placement rather than in the classroom where further disruptions could occur. Again, this provides our teachers and the school districts much-needed local disciplinary control.

Opponents claim that this attacks the disabled. This is just not true. This amendment is not designed to deprive anyone of his or her opportunity to learn. It is designed, rather, to protect the majority of the students in our Nation's schools from the threat of serious violent behavior.

Some argue that we should wait until next year when all of the Individuals With Disabilities Education Act is reauthorized to offer this amendment. Why should we neglect the pressing safety problems in our Nation's schools today? How many more destructive incidents must occur before Congress takes action? But even so, in order to address some of my opponents' concerns, we have included a sunset provision in the amendment. This amendment will sunset when the Individuals With Disabilities Education Act is reauthorized unless, of course, it is extended and expanded.

In my opinion, and I believe my colleagues will agree, no student, whether or not he or she is disabled, has the right to bring a dangerous weapon to class or to school property or to a school-sponsored event, nor should any student be able to engage in life-threatening behavior in the classroom without appropriate disciplinary action being taken. This type of behavior is destructive to the learning environment of all our children and must not be tolerated. We must ensure the safety of the students in our Nation's schools. No student can learn in an environment of fear. The ability of school districts to remove these students increases the safety for all students. As Members of Congress, we have the authority to restore a balance to the current dual system of discipline in our schools.

Madam President, this Senator has discussed this problem with a large number of educators in my State. Those educators have shared incident after incident of violence and disruption taking place in their schools every single day. Let me share a few examples to demonstrate the dual system of discipline. Take, for example, the situation in Washington State where a first grader brought a large screwdriver to school, put it to the throat of another first grader and said he was going to run it through the child's throat. The student was a special needs student and special education laws came into play so that the child was put back into the same classroom. The parents of the traumatized student withdrew their child and threatened to file a lawsuit. The offender was able to continue subsequent acts which continued to terrorize other students.

Or a fourth grade student who concealed a knife in her backpack, extorted lunch money from other students by threatening that she would use it on them. When she did pull the knife and physically intimidated a schoolmate, the school was able to begin the disciplinary process, only to discover when the parents came in that she had been a special education student 2 years earlier in a previous school district and the present school had no record of the placement. The parents appealed the disciplinary action and the girl was sent back to class pending settlement.

Or a fifth grade physically handicapped student in the regular classroom, special education qualified due to physical disability, threw tantrums and hit a teacher for up to 40 minutes at a time. Again, the school was severely limited in potential sanctions because of the special education mandate.

Or a sixth grade student who brought a gun to school, used it to threaten and intimidate, waving it around and telling students who he would kill. The gun turned out to be a facsimile, though it is metal, dark in color, and looks very real. Parents claim, because of his learning disability, he was "just joking around." Here again is a situation where, due to special education status, the student was returned to class.

More instances: A behaviorally disturbed special education student physically abused his classmates. On one occasion the teacher restrained the child and was herself kicked and punched several times. After a lengthy process, the student was suspended for 5 school days. Upon his return, the same activities began again with the addition of threats to the life of the teacher. The student could be suspended only for short periods of time during the remainder of the year. The teacher resigned her teaching position with the district.

Madam President, these unfortunate incidents are occurring in school districts across the country. Let me share with you an article that appeared less than 2 months ago in the Los Angeles Times describing a situation in Orange County in which a 6-year-old kindergartener who allegedly bit teachers, threw a desk, hit and spit at students, and sent a teacher and her aide out on medical leave and was sued by the Huntington Beach School District. The injuries were not found serious enough for the student to be removed. As a result of the stay-put provisions in the IDEA, a judge forced the school to keep this student in the classroom. Parents of 12 of the 31 children in the class temporarily removed their children for fear of endangerment. In this case, as in others, the right of all schoolchildren for a violence-free classroom was not taken into account.

In some cases IDEA is manipulated by students who have never been recognized as having a disability but receive protection after engaging in unacceptable school behavior. For example, in February of this year, a 17-year-old student at El Capitan High School in a California district who took a handgun to school in clear violation of State law and school district rules was allowed to stay in school pending resolution of a disability issue.

The school would have to prove that there was a high likelihood that the boy's presence on campus would create a violent situation in order to remove him for longer than the mandatory 10 days. It must also be determined whether the student is a victim of "attention deficit disorder" and, therefore, deserving a special education status.

In other words, Madam President, the very antisocial actions are claimed to demonstrate disability and to prevent discipline by schools.

This ingenious legal theory will allow dangerous students to remain on campus simply because of an allegation of disability, and all they may have to do is to allege entitlement for special education. Because the school district's decision to deny special education, and appealed as high as the Supreme Court, a student using the loophole may stay in school indefinitely.

In this respect, we have the same or similar situation which was discussed to the shock of other Members on the

floor here not long ago about the fact that disability payments are made under some portions of the Social Security Act to children who are disruptive in school because the disruptive activity itself is considered evidence of disability and, therefore, allows for an extra Social Security subsidy for those students and their parents.

Our schools, and our school authorities, need help now, and the help they need is the authority to do their own jobs without being interfered with from Washington, DC. But we are not going to provide the proper educational atmosphere for our students until we restore authority to our school authorities to do the job that they need to do.

Madam President, this is an extremely limited amendment. School authorities in my State and across the country wish to be freed from Federal regulations on school disruption on a very, very broad basis. With a great deal of caution however, we have limited this amendment to weapons violations, and to life-threatening behavior which in turn is defined as it is under the guidelines for the sentencing commission for those who are to go to prison.

I am certain that next year or the year after—whenever we get to the renewal of the IDEA act—there will be a debate on whether or not we should not grant more authority to our local schoolteachers and school board members.

This law, and the refusal to agree easily to this amendment, are an expression of mistrust in the people who teach our children and who run their schools. We give lip service to local control. But when it comes right down to it we do not want that local control to be followed. If we are to have safe schools, we must allow these decisions to be made by the authorities and in the communities most affected by them.

As a result, five national educational associations have strongly endorsed this amendment.

They include the National Association of Secondary School Principals, the National Association of Elementary School Principals, the National School Boards Association, the American Federation of Teachers, and the American Association of School Administrators. Strong support from the education community in Washington State where the push for this amendment began is widespread. I have the support of the Washington Association of School Principals, the Washington School Directors' Association, the Washington State PTA, the Committee for the Right To Keep and Bear Arms, the Clover Park School District, and the Wapato School District.

Madam President, I submit for the RECORD the letters of support that I received from these groups and I request that the RECORD include them as if they were read.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

July 26, 1994.

Re Support for Senator Gorton's local control over school violence amendment to S. 1513.

Hon. EDWARD M. KENNEDY,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR KENNEDY: The above national education organizations urge you to vote in favor of Senator Gorton's Amendment to S. 1513 which would modify the stay-put provisions on the Individuals with Disabilities Education Act (IDEA) to ensure school safety. With the growing wave of violent incidents in our schools, educators need to be able to take reasonable measures to protect all students, teachers and other school personnel from bodily harm while still meeting the needs of children with disabilities for a free appropriate public education.

While only a minority of the students commit violence, a troubling number of incidents occur where students with disabilities do assault or otherwise threaten the safety of other students and school staff for reasons that may or may not be related to their disability. Under current law, school officials do not have adequate authority in these situations to ensure school safety.

The stay-put provisions of the IDEA prevent school administrators from suspending students for more than ten days without the permission of a judge or the child's parents. And even if the school district goes to court, the school district's burden of proof is so high that they often cannot take the common sense steps they need to protect students.

When Judge Judith Keep recently ruled that IDEA forced her to order a school in El Capitan, California to readmit a student who had taken a gun to school, she stated IDEA is "a wonderfully noble Act [but] can * * * undercut a school's ability to discipline students." Indeed, the U.S. Department of Education has argued that even congressionally-mandated expulsion polices for students who bring guns to schools do not supersede the stay-put provisions of IDEA.

The Gorton Amendment provides a balanced and reasonable first step to correct these problems and protect the safety of all students—those with disabilities as well as those without. In cases where the disabled student demonstrates life threatening behavior, school officials could take a student out of the classroom and place the student in an alternative educational setting for up to 90 days. If the parents contested the placement, school safety would still be preserved; the student would remain in the interim educational placement until a final placement decision was made. The amendment also provides a means for Senator Dorgan's recently enacted mandatory expulsion and alternative education policies for students who bring weapons to school to apply under IDEA.

The inadequacies of current law are significant and dangerous and need to be resolved as soon as possible by the Congress. Waiting another year—or longer—for the regular IDEA reauthorization to be complete is not an adequate response to the pressing safety problems in our schools today. The Gorton amendment appropriately balances the needs of all students for a safe place to learn and strive to achieve the ambitious national education goals set by Congress in Goals 2000. We urge you to vote in favor of the Gorton amendment to S. 1513.

Sincerely,

AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS.
AMERICAN FEDERATION OF TEACHERS.
NATIONAL ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS.
NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS.
NATIONAL SCHOOL BOARDS ASSOCIATION.

AMERICAN FEDERATION OF TEACHERS,
Washington, DC, July 20, 1994.

Hon. SLADE GORTON,
Hart Senate Office Building, U.S. Senate, Washington, DC.

DEAR SENATOR GORTON: The American Federation of Teachers supports your amendment to S. 1513 with respect to modifying the stay-put provisions of the Individuals with Disabilities Education Act.

The AFT believes your amendment will not diminish the rights of disabled students under I.D.E.A. Rather, it will offer disabled and other students appropriate protection from violence by a small number of students who bring weapons to school or demonstrate life threatening behavior in the classroom or on school premises. Furthermore, it will continue due process rights and require continuing educational services in an interim alternative placement for any student exhibiting such behavior.

The AFT also supports your amendments concerning student records and parental responsibility. It is important to allow the transfer of disciplinary records among schools and to encourage the participation of parents in disciplinary actions affecting their children.

Sincerely,

ALBERT SHANKER,
President.

NATIONAL SCHOOL BOARDS ASSOCIATION,
Alexandria, VA, July 13, 1994.

Hon. SLADE GORTON,
Hart Senate Office Building, U.S. Senate, Washington, DC.

DEAR SENATOR GORTON: The National School Boards Association (NSBA), on behalf of the more than 95,000 local school board members nationwide, would like to offer its support for your amendment to S. 1513 which would modify the stay-put provisions of the Individuals With Disabilities Education Act (IDEA). We also support your amendment which would clarify current educational privacy law so that educators can transfer student records more easily in order to insure student safety.

The plague of violence is having a growing impact on children and youth across America and in many schools is endangering student safety. We support the amendment to IDEA because, in some cases of violence by students with disabilities, school administrators do not have the authority to act decisively to insure the safety of other students.

Your amendment to the stay-put provisions of IDEA will allow school administrators to remove a temporarily violent student from the regular classroom while still providing the student with a free, appropriate public education. Because the amendment will protect the civil rights of students with disabilities while enhancing the ability of school authorities to insure student safety,

we support adoption of the amendment by the Senate.

We also support your amendment to the Family Educational and Privacy Rights Act which clarifies that school administrators can transfer the records of students who pose safety risks to other students. In this way we can be certain that other schools have the information necessary to take appropriate actions to insure student safety. We urge Senators to support this amendment.

We believe that these two proposed changes in law would enhance school safety and we urge the Senate to support them.

If you have questions regarding this issue, please contact me at 703-838-6704.

Yours very truly,

EDWARD R. KEALY,
Director, Federal Programs.

THE NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS,
Reston, VA, July 7, 1994.

Hon. SLADE GORTON,
U.S. Senate,
Washington, DC.

DEAR SENATOR GORTON: On behalf of the 42,000 members of the National Association of Secondary School Principals, I want to express our support for the three amendments you intend to offer to S. 1513, "The Improving America's Schools Act of 1994." These amendments are an important step toward improving parental involvement in our schools, particularly regarding the issues of school discipline and providing greater latitude to school officials coping with violence on school premises.

First, your Sense of the Senate amendment is an important statement about the integral role that parents must play in ensuring an effective learning climate in our schools. Parents whose children display violent behavior toward teachers, fellow students, and school employees must not only be informed, but they must support school officials in their effort to effect appropriate disciplinary action. We strongly urge that this Sense of the Senate amendment be adopted and become a part of the Senate's ongoing consideration with regard to improving schools.

Second, the amendment designed to assure that school officials are fully informed about a student's past record of violent behavior must have the Senate's support. Principals across the nation are charged with the responsibility of assuring the safety and wellbeing of all those within the school facility. This amendment would give school officials the necessary information to enable them to fulfill that important charge. Too often schools receive students whose record of violent, even criminal, activity is not made available to principals. These record-keeping barriers must be broken and principals and other school officials must have access to information that has the potential of undermining their effort to ensure a safe school.

Finally, we strongly support the amendment to the Individuals with Disabilities Education Act (IDEA), addressing the violent behavior of some disabled children. This amendment seeks to allow school officials to separate violent children in a special education program from the classroom or the school premises should they demonstrate life threatening behavior. Currently, the IDEA grants parents veto power over the change of placement in a school's special education program. While this entitlement assures absolute parental involvement in a child's educational placement, it often hampers a principal's effort to provide a safe learning environment.

The nation's principals believe that this is a critical issue with regard to public confidence in our local schools. It is profoundly discrediting to our institutions for a dual system of justice to be administered on such a regular basis, with one system for our disabled children and an entirely different system to the other students. This duality must be halted if we are to genuinely assure our communities that their schools are safe havens of learning.

Although some would advocate waiting to amend the IDEA until next year, the nation's secondary principals believe that action should be taken now as part of an overall effort to make our schools safer. We look forward to working with you in assuring that these important amendments are adopted by the United States Senate and ultimately, are part of the final version of ESEA.

Sincerely,

Dr. TIMOTHY J. DYER,
Executive Director.

AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS,
Arlington, VA, July 19, 1994.

Hon. SLADE GORTON,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR GORTON: The American Association of School Administrators (AASA), would like to thank you for your proposed school safety amendments to S. 1513, the reauthorization of the Elementary and Secondary Education Act. Schools should be safe havens from the violence in the rest of our society. We hope that your amendments and the safe schools programs in S. 1513 will help make every school a warm safe place for children to learn.

The amendment regarding the "stay put" rule is of particular interest to AASA. We support your amendment. Stretching the suspension period to 90 days permits a more orderly process of fact finding and looking for alternatives than the 10 days in federal regulations. We, however, are concerned that your amendment will experience difficulty because the criteria for suspension are not precise enough. What constitutes a weapon or life threatening behavior will provide a basis for defeating the amendment.

If the amendment falls and the vote is close enough to initiate negotiations, we urge you to use terms that are defined in the code of federal regulations and observable behaviors as the criteria for suspension.

Sincerely,

BRUCE HUNTER,
Senior Associate Executive Director.

THE ASSOCIATION OF WASHINGTON SCHOOL PRINCIPALS,
Olympia, WA, June 17, 1994.

Hon. SLADE GORTON,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR GORTON: We are beginning to sense a bit of optimism in the struggle to reduce youth violence in the state of Washington. One obvious key to our success will be the ability to share necessary information among agencies and between schools with respect to those students who have been convicted of a violent act or have a history of violent behavior. This sharing of information is essential in order for proper school placement and supervision of the student involved, as well as for reasonable protection of all other students. Parents, students and public demand and deserve safe schools.

The Association of Washington School Principals for your willingness and persistence in championing the cause of safe schools and communities as well as for your overall support for public education. We have met with other educators, parents, representatives of state government, the juvenile rehabilitation, and parent advocates to discuss the issues surrounding the sharing of student records, particularly as related to identified special education students. The principals' point of view follows.

We are very supportive of your three suggested amendments to current status language. Your recommendation provides a mechanism to appropriately remove violent or potentially violent students from school. No student, with or without handicapping conditions has the right to commit violent acts in our schools. The right of the parent to advocate for the child in interim/alternative placement is protected, while at the same time allowing professionals in the school to remove the violent offender where necessary.

Unfortunately, under current statute, in situations where parents refuse and agreement to the recommended alternative/interim placement cannot be reached, that violent student remains in the educational setting under provisions of "stay-Put." Interim placement for up to 90 days without parent consent allows adequate opportunity for final resolution while protecting the vast majority of our students.

We certainly support your proposal for involvement of parents of children who display violent behavior in determining their disciplinary action and enforcement.

Finally, we appreciate your addition to section 438 of the General Provisions Act which clarifies the right and obligation of school officials to share student discipline records as appropriate. Our request for such clarifying language is generated by the ongoing misperception regarding what FERPA does or does not permit.

These are significant changes which will greatly assist us in reducing incidents of violence in Washington's public schools. Again, thank you and best wishes.

Sincerely,

WALTER BALL,
Associate Executive Director.
BRIAN BARKER,
Associate Executive Director.

WASHINGTON STATE SCHOOL DIRECTORS' ASSOCIATION,
Olympia, WA, June 17, 1994.

Hon. SLADE GORTON, U.S. SENATE, HART SENATE OFFICE BUILDING, WASHINGTON, DC

DEAR SENATOR GORTON: The Washington State School Directors' Association, representing the 1482 locally-elected school board members in our state's 296 school districts, is very supportive of your proposed student safety amendments to S. 1513.

These proposed amendments address three issues of importance to our members:

1. It clarifies that students may be removed from a classroom setting if their actions threaten themselves or others, while not specifying the precise duration of that removal (suspension or expulsion):

2. It assures that if the offending student is in a special education program that said student will not be denied an educational opportunity, but instead be placed in an alternative setting pending disciplinary decisions (due process must be followed); and

3. It also assures that federal laws on student discipline or weapons violations shall not supersede state or local regulations.

This is a good and helpful amendment. WSSDA appreciates the assistance and the willingness to seek our input that we have observed from your office, and specifically from Jennifer Parsons, on this important matter. And I might add that the other proposed amendments regarding school and parental responsibility also look very good to us.

Thank you very much.

Sincerely,

DWAYNE SLATE,
Associate Executive Director.

WASHINGTON STATE PTA,
Tacoma, WA, July 13, 1994.

Hon. SLADE GORTON,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR GORTON: The Washington State PTA supports the School Violence Amendment to the Individuals with Disabilities Act which you are sponsoring. We appreciate your concern about the issue of violence in our public schools. As both parents and educators expressed at your Education Summit in January, the issue of youth violence is a priority for all of us who are advocates for children.

Educators and parents stressed that there are federal regulations which make it difficult to create a safe, orderly environment in our schools. Educators are unreasonably hampered in their efforts to prevent or reduce incidents of violent behavior. They find that regulations inhibit their ability to design and implement discipline in their schools.

As Section 602(a)(20) of the IDEA does include parents in the Individual Educational Placement team, which will determine placement for violent students, the Washington State PTA feels confident that parents' rights have been protected in this plan. Parents need to be involved in the decision making process, but also need to be accountable for the actions of their children who display violent or threatening behavior toward others.

We understand that parents of disabled children are concerned about the effect of this amendment on the rights of their children. However, parents and teachers have observed that when a student displays violent behavior in the classroom, which the teacher is unable to address by removing that student from the classroom, the educational performance of all students is adversely impacted. The educational performance of special needs students is severely diminished, as well. Thus, the Washington State PTA believes that this amendment will provide needed protection for all students.

We applaud your support for the safety and welfare of the students of Washington.

Sincerely,

CARA LOCKETT,
President.

WAPATO PUBLIC SCHOOLS,
Wapato, WA, July 8, 1994.

Hon. SLADE GORTON,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR GORTON: The purpose of this letter is to support your efforts in amending S. 1513 and the Individuals with Disabilities Act. Though you will undoubtedly face strong opposition on the Senate Floor, your proposed amendments are timely and much needed in the educational community if we are to complete our task of restructuring America's schools.

Of particular interest is your proposal to amend the Individuals with Disabilities Act (IDA). No one in education will argue against the right of special education students to receive equal educational opportunities. However, it seems that in our rush to insure these rights we have forgotten the rights of other students to receive those same opportunities on an equal basis.

Inclusion models which place special education students in regular classrooms work well for the majority of children. They adjust well and participate with other students in mainstream activities. Unfortunately, a minority of special education children can and do become violent, abusive or disruptive. In these cases all children lose their opportunity for quality education.

Under current law schools have extremely limited options in dealing with these children. Extensive documentations and hearings generally result in short term removal. Once the child returns to the classroom the cycle begins again. This is particularly frustrating with students who tend to be violent.

Two examples of this type of situation come to mind. In the first a behaviorally disturbed special education student physically abused his classmates. On one occasion the teacher restrained the child and was herself kicked and punched several times. After a lengthy process the student was suspended for 5 school days. Upon return the same activities began again with the addition of life threats to the teacher. The student was suspended for short periods of time during the remainder of the year and the teacher resigned her position with the district.

The second incident involved a middle school boy with a long history of aggressive behavior toward teachers and students. Because of his special education qualification the district was again limited in its ability to provide optional learning environments. In this case the student was ultimately removed from school. Not by the school but the courts after he participated with some other youths in nearly beating a man to death in downtown Yakima.

There are thousands of stories similar to this taking place daily in our nation's schools. The result can be seen in an ever increasing exodus from public to private educational institutions. Your proposed IDA amendment might be the first step in helping to curb this trend.

It can be argued that the amendment does not go far enough, that we need even more options beyond the 90 day alternative. To this I would reply that any change which helps us do our job is better than the current situation. Also, the first step has to come before we are able to move further.

We applaud you in your efforts and wish you the best of luck in bringing about passage of these amendments. I know that at least the IDA amendment will meet with opposition, but hopefully its sufficiently moderate to meet with the approval of a majority of your colleague.

Again our support for your efforts on passing these amendments and our thanks for your work of behalf of public education.

Sincerely,

RICHARD FOSS,
Associate Superintendent.

CITIZENS COMMITTEE FOR THE
RIGHT TO KEEP AND BEAR ARMS,
Bellevue, WA, July 14, 1994.

Hon. SLADE GORTON,
U.S. Senate,
Washington, DC.

DEAR SENATOR GORTON: Thank you for introducing the Local Control over School Violence amendment to S. 1513. This amendment addresses the very real problem of violent behavior in our schools. The Citizens Committee for the Right to Keep and Bear Arms fully supports your amendment to S. 1513 and other legislation that identifies and helps to control the type of dangerous behavior that has made many of our public schools more like war zones than educational facilities.

As you know, the Citizens Committee for the Right to Keep and Bear Arms has long been a supporter of bills that identify and restrict specific criminal and violent behaviors and activities. Bills of this type enhance public safety without treading on basic civil liberties.

The Individuals with Disabilities Education Act is a well intentioned act, but in many cases it has taken away from schools and educators the ability to control behavior that destroys the educational environment and places all of our youth at risk. The Local Control over School Violence amendment to S. 1513 will help to correct that flaw.

If there is anything we can do to help the Local Control over School Violence amendment along the road to passage, please don't hesitate to contact me.

Sincerely yours,

PAUL M. WILLIAMS,
Executive Director.

CLOVER PARK SCHOOL DISTRICT,
Tacoma, WA, June 28, 1994.

JENNIFER PARSONS,
Office of Slade Gorton, Hart Building, Washington, DC.

DEAR JENNIFER: At your request, several administrators have reviewed the draft language regarding Youth Violence. In our opinion, these changes will significantly increase the ability of school administrators to deal with violence/assaultive students. We commend the Senator for his interest in this important issue and his diligence in attempting to modify Federal law to deal with it.

Unfortunately, due to the end of the school year I was unable to get any antidotes for you. Good luck to you and the Senator as you work on this important matter.

Yours truly,

KAREN A. FORYS,
Superintendent.

Mr. GORTON. Madam President, let me share with you some excerpts from these letters of support.

AFT—The American Federation of Teachers believes that your amendment will not diminish the rights of disabled students under IDEA. Rather, it will offer disabled and other students appropriate protection from violence by a small number of students who bring weapons to school or demonstrate life threatening behavior in the classroom or on school premises. Furthermore, it will continue due process rights and require continuing educational services in an interim alternative placement for any student exhibiting such behavior.

National School Boards Association—Your amendment to the stay-put provision of IDEA will allow school administrators to remove a temporarily violent student from the regular classroom while still providing the student with a free, appropriate public education. Because the amendment will protect the civil rights of students with disabilities while enhancing the ability of school authorities to ensure student safety, we support adoption of the amendment by the Senate.

National Association of Secondary School Principals—We strongly support the amendment to the Individuals with Disabilities

Education Act, addressing the violent behavior of some disabled children. This amendment seeks to allow school officials to separate violent children in a special education program from the classroom or the school premises should they demonstrate life threatening behavior. * * * Although some would advocate waiting to amend the IDEA until next year, the nation's secondary school principals believe that action should be taken now as part of an overall effort to make our schools safer.

WA State PTA—We understand that parents of disabled children are concerned about the effect of this amendment on the rights of their children. However, parents and teachers have observed that when a student displays violent behavior in the classroom, which the teacher is unable to address by temporarily removing that student from the classroom, the educational performance of all students is adversely impacted. The educational performance of special needs students is severely diminished, as well. Thus, the Washington State PTA believes that this amendment will provide needed protection for all students. We applaud your support for the safety and welfare of the students of Washington.

Madam President, included in the committee amendments are two other of my proposals to address school violence. The first is a clarification of the current law explaining what information can be placed in the student's cumulative record and transferred to the next school the student will attend. The second amendment is a sense-of-the-Senate provision that encourages parental responsibility in connection with disciplinary actions involving their children.

STUDENT RECORDS

I have been told by many educators in my State that the maintenance and transfer of student records are often inadequate. These educators claim that student records indicating that the student is a serious disciplinary problem are often not being transferred among schools so that the cumulative student record often doesn't reflect the reasons why the student was expelled. For example: If a student brings a weapon to class or displays behavior that has the potential to inflict severe bodily harm and the student is expelled from school and enrolls in a new school—the new school is often not informed of the student's past discipline problems. Even more disturbing is the fact that the information is often not accessible.

Teachers and principals want to have this information on new students entering their school who have a history of bringing a weapon to class or the potential to cause serious harm to the teacher or other students. They need this information in order to control their classrooms.

The Family Educational and Privacy Rights Act [FERPA], deals with the release of educational records and protects the rights of students. There is definitely a problem with the statutory interpretation of this act. Many educators do not realize that Federal law [FERPA] already allows for the maintenance and transfer of records. School records are not being updated and transferred because school districts find the language unclear and are fearful of lawsuits. A clarification of FERPA will define the law to educators clearing up any misunderstanding surrounding student record maintenance and transfer. It states that nothing in section 438 of the General Education Provisions Act prohibits schools from maintaining records about students who pose safety risks or from disclosing such information to other schools attended by those students.

A clarification of the FERPA language will substantially assist our educators because it will now be clear what information can be placed in the permanent record and where this information can be transferred. This is an important step in allowing our nation's educators to know the background of the students entering their schools in order to prepare for discipline problems.

PARENTAL RESPONSIBILITY

As a parent and grandparent, I believe that parents should take responsibility for their child's actions and become involved in the school disciplinary proceedings. This amendment reaffirms the importance of parental involvement in the children's learning process. Parents of children who display violent behavior must be informed of the misbehavior and should support school officials in taking appropriate disciplinary action. The role of parents in both the education and discipline of their children is essential to enhancing learning and must be encouraged.

Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER (Mr. DORGAN). Is there a sufficient second?

Mr. GORTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I ask unanimous consent—with the approval of the author of the amendment—that this amendment be temporarily set aside so that we can consider the amendments of the Senator from Pennsylvania, [Mr. SPECTER].

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 2419

(Purpose: To provide demonstration projects to test the effectiveness of private management of public education programs)

Mr. SPECTER. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] proposes an amendment numbered 2419.

Mr. SPECTER. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 538, on line 2, strike "; and" and insert the following: ", including contracts with private management companies;".

On page 538, on line 5, before the period add the following: "; and

"(IX) contracting out the management of troubled schools to private management firms".

On page 780, line 9, strike "and".

On page 780, after line 11, before the "." insert the following: "; and

"(I) establish partnerships with private educational providers whose comprehensive technology systems address the need of children in poverty."

On page 1000, line 10 strike the "and", and insert the following:

"(R) demonstrations that are designed to test the effectiveness of private management of public educational programs, with at least one demonstration carried out in each of the ten Department of Education regions, and with funds used to support planning, start-up costs and evaluation; and"

On page 1000, line 11, strike "(R)" and insert: "(S)".

On page 1165, before Part G, insert the following new section:

"SEC. . PRIVATELY MANAGED SCHOOLS.

"Nothing in this Act shall be construed to deny States or local educational agencies the opportunity to use Federal funds to contract with private management firms."

Mr. SPECTER. Mr. President, this amendment would establish at least 10 demonstration projects to test the effectiveness of private management of public educational programs.

The thrust of the amendment is to see how effective private management of public education would be in dealing with the very, very serious problems in the American school systems today. We have in our school system some 43 million schoolchildren, and there is no doubt that the educational programs in our schools are failing to meet the challenge.

We have seen a number of cities adopt private management of schools, such as Boston, MA; Worcester, MA; Lowell, MA; Wichita, KS; Austin, TX. The Baltimore experience, so far, looks promising, although the experience is not sufficient to be conclusive. The District of Columbia private school system had considered private management and decided not to because of some underlying political controversy.

Last Saturday's New York Times details the very serious situation in the Newark school system, where the State of New Jersey Education Department was preparing for a Newark's schools. What we have seen of privatization has been attractive, and it is the thrust of this amendment to have at least 10

pilot projects, 10 demonstration projects, to be able to test this out in some detail.

I first became interested in this whole approach when I found that the distinguished president of Yale University, Benno Schmidt, left his position to take an executive post with a private administrative operation for schools. When I first heard about the privatization of schools—running schools for a profit—my initial inclination was in the negative. And then, after a while, I thought it over and decided if a private administrative operation can attract the talent like the president of Yale University and various other talented people with other companies, why not give it a try. In the Goals 2000 bill, Mr. President, we have a limited provision that allows States, if they wish, to use some of that Federal funding to test out privatization.

But this amendment would go substantially further in allowing these 10 demonstration projects to come into existence to test the effectiveness of the private management of the public educational program.

It is not necessary to talk at great length about the problems in American education or about the need for improvement in American education to prepare the young people of our country for the 21st century.

Education may not be the panacea for America's problems, but nothing comes closer to giving us a very real and lasting solution. The challenge is to find new and better ways to teach the country's 43 million school children. That takes new ideas. It also means finding new approaches to free up teachers and school administrators from noninstructional duties, allowing them to devote more time and resources to the task of educating our children. As a member of the U.S. Senate subcommittee that this year recommended more than $27.4 billion for education programs, I take this challenge seriously. That is why in January, I called a hearing to learn more about an idea now being tested by a handful of school districts—contracting with private firms to manage some facets of public school education.

Among those at the hearing were school superintendents, union representatives, education policy experts, and the heads of two private management firms, including former Yale president, Benno Schmidt. Each gave his or her own unique perspective on the idea. In Baltimore City, 12 schools are currently being managed by a private firm. At the hearing, Baltimore city Superintendent Dr. Walter Amprey reported seeing an increased level of parent involvement and greater interest in computerized instruction. Perhaps most importantly, Dr. Amprey views the link between public education and business as a way to unite the hands of educators and at the same time instill accountability in our education system.

When I first heard of proposals by private companies to administer public schools for profit, my reaction was decisively negative. But, when I reflected on it, I thought: why not? If public school administration could attract talented people like Benno Schmidt, and have the benefit of his initiative and ability, it could be a decisive net benefit to the public schools.

Actually, the idea was not entirely new. The past several years have seen the emergence of a number of for-profit private firms offering to assume certain aspects of school operations, including day-to-day administration, teacher training, and other noninstructional activities. Typically, these companies manage the school for the same cost as is currently spent by the public schools, about $5,900 per pupil. Initially, the companies invest their own capital in upgrading the learning environment by repairing and modernizing the school building, cleaning, painting, and installing state-of-the-art computers. After that initial investment, the onus is on the companies to reduce school operating costs. A portion of the money saved through management efficiencies is returned to the school; the remainder is profit to the management firm.

But, as Albert Shanker, president of the American Federation of Teachers accurately points out, the concept of private management of public schools has yet to prove itself. And anyone who views this as a quick fix is bound for disappointment.

The amendment which I am offering today, will provide funds for demonstration projects to find out if private firms have something to offer today's schools. The amendment would authorize at least 10 demonstration projects to test the effectiveness of private management of public educational programs. Projects would be spread over the 10 Department of Education regions of the country, with funds being used to support planning and start-up costs. At the end of the demonstration program, an independent evaluation of each project will be done which will provide a true picture of how effective private management firms have been in educating children. The amendment will also amend other provisions of the bill to assure that State and local educational agencies could use Federal funds to contract with private management firms if they wish to do so.

Admittedly, any reform is difficult, and any change from past practice is likely to stir controversy. But given what is at stake for the future well-being of this country, a public-private partnership, such as that offered by private management companies, with input from teachers, students, parents, and administrators deserves careful consideration.

Mr. President, the managers of the bill, as I understand it, have agreed to the amendment. So I shall not spend any further time at this point elaborating upon it.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I support the amendment of the Senator from Pennsylvania. I do have serious concerns about the idea of encouraging wholesale private management of schools. Schools are not businesses, and I do not believe competition is the answer to the problems of the public school system.

However, in some cases schools are badly in need of help. In these cases, schools may choose to take advantage of private management in a carefully controlled way, I think it is appropriate to allow schools to use the Federal education fund for this purpose, so, Mr. President, I urge that the amendment be accepted.

The PRESIDING OFFICER. Are there other Senators wishing to be heard on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 2419) was agreed to.

Mr. SPECTER. Mr. President, I move to reconsider the vote.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Chair recognizes the Senator from Pennsylvania.

AMENDMENT NO. 2420

(Purpose: To establish a grant program to provide workplace and community transition training to youth offenders in prisons, and for other purposes)

Mr. SPECTER. Mr. President, I send an amendment to the desk on behalf of myself and Senator PELL and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER], for himself and Mr. PELL, proposes an amendment numbered 2420.

Mr. SPECTER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . GRANTS TO STATES FOR WORKPLACE AND COMMUNITY TRANSITION TRAINING FOR INCARCERATED YOUTH OFFENDERS.

(a) FINDINGS.—The Congress finds the following:

(1) Over 150,000 youth offenders age 21 and younger are incarcerated in the Nation's jails, juvenile facilities, and prisons.

(2) Most youth offenders who are incarcerated have been sentenced as first-time adult felons.

(3) Approximately 75 percent of youth offenders are high school dropouts who lack basic literacy and life skills, have little or no job experience, and lack marketable skills.

(4) The average incarcerated youth has attended school only through grade 10.

(5) Most of these youths can be derived from a life of crime into productive citizenship with available educational, vocational, work skills, and related service programs.

(6) If not involved with educational programs while incarcerated, almost all of these youths will return to a life of crime upon release.

(7) The average length of sentence for a youth offender is about 3 years. Time spent in prison provides a unique opportunity for education and training.

(8) Even with quality education and training provided during incarceration, a period of intense supervision, support, and counseling is needed upon release to ensure effective reintegration of youth offenders into society.

(9) Research consistently shows that the vast majority of incarcerated youths will not return to the public schools to complete their education.

(10) There is a need for alternative educational opportunities during incarceration and after release.

(b) DEFINITION.—The term "youth offender" means a male or female offender under the age of 25, who is incarcerated in a State prison, including a prerelease facility.

(c) GRANT PROGRAM.—The Secretary shall establish a program in accordance with this section to provide grants to the States to assist and encourage incarcerated youths to acquire functional literacy, life, and job skills, through the pursuit of a postsecondary education certificate, or an associate of arts or bachelor's degree while in prison, and employment counseling and other related services which start during incarceration and continues through prerelease and while on parole.

(d) APPLICATION.—To be eligible for a grant under this section, a State agency shall submit to the Secretary a proposal for a youth offender program that—

(1) identifies the scope of the problem, including the number of incarcerated youths in need of postsecondary education and vocational training;

(2) lists the accredited public or private educational institution or institutions that will provide postsecondary educational services;

(3) lists the cooperating agencies, public and private, or businesses that will provide related services, such as counseling in the areas of career development, substance abuse, health, and parenting skills;

(4) describes the evaluation methods and performance measures that the State will employ, provided that such methods and measures are appropriate to meet the goals and objectives of the proposal, and that they include measures of—

(A) program completion;

(B) student academic and vocational skill attainment;

(C) success in job placement and retention; and

(D) recidivism;

(5) describes how the proposed programs are to be integrated with existing State correctional education programs (such as adult education, graduate education degree programs, and vocational training) and State industry programs;

(6) addresses the educational needs of youth offenders who are in alternative programs (such as boot camps); and

(7) describes how students will be selected so that only youth offenders eligible under subsection (f) will be enrolled in postsecondary programs.

(e) PROGRAM REQUIREMENTS.—Each State agency receiving a grant under this section shall—

(1) integrate activities carried out under the grant with the objectives and activities of the school-to-work programs of such State, including—

(A) work experience or apprenticeship programs;

(B) transitional worksite job training for vocational education students that is related to the occupational goals of such students and closely linked to classroom and laboratory instruction;

(C) placement services in occupations that the students are preparing to enter;

(D) employment-based learning programs; and

(E) programs that address State and local labor shortages;

(2) annually report to the Secretary and the Attorney General on the results of the evaluations conducted using the methods and performance measures contained in the proposal; and

(3) provide to each State not more than $1,500 annually for tuition, books, and essential materials, and not more than $300 annually of related services such as career development, substance abuse counseling, parenting skills training, and health education, for each eligible incarcerated youth.

(f) STUDENT ELIGIBILITY.—A youth offender shall be eligible for participation in a program receiving a grant under this section if the youth offender—

(1) is eligible to be released within 5 years (including a youth offender who is eligible for parole within such time); and

(2) is 25 years of age or younger.

(g) LENGTH OF PARTICIPATION.—A program receiving a grant under this section shall provide educational and related services to each participating youth offender for a period not to exceed 5 years, 1 year of which may be devoted to study in a graduate education degree program or to remedial education services for students who have obtained a high school diploma. Educational and related services shall start during the period of incarceration in prison or prerelease and may continue during the period of parole.

(h) EDUCATION DELIVERY SYSTEMS.—Correctional education agencies and cooperating institutions shall, to the extent practicable, use high-tech applications in developing programs to meet the requirements and goals of this program.

(i) ALLOCATION OF FUNDS.—From the amounts appropriated pursuant to subsection (j), the Secretary shall allot to each State an amount that bears the same relationship to such funds as the total number of eligible students in such State bears to the total number of eligible students in all States.

(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $18,000,000 for fiscal year 1995; and

(2) such sums as may be necessary for fiscal year 1996 and each fiscal year thereafter.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, the thrust of this amendment is to provide for an authorization to allow Federal funds to be spent for educating youthful offenders up to the age of 25, who are eligible for parole or release within 5 years.

The recidivism in America is well known. The problems of career criminals are also well known, with career criminals committing about 70 percent of the offenses.

Career criminals commit two or three robberies or burglaries a day. When I was district attorney of the city of Philadelphia for some 8 years, I found this group of career criminals to be the bane of law enforcement, really wreaking havoc on law-abiding citizens. It is no surprise that when someone who is illiterate leaves jail, without a trade or a skill, that that individual returns to a life of crime.

There has been relatively little sympathy for the offender in terms of trying to take the offender out of the crime cycle. But there is considerable concern about taking the offender out of the crime cycle in order to protect the public.

The amendment here would provide up to $1,500 in education, for tuitions and books, and up to $300 for career development, and counseling on drugs and health education. This provision is necessary because the crime bill makes all prisoners ineligible for the Pell grant program.

There is a great deal of talk about "three strikes and you are out," which I believe is overly simplistic. I say that based upon the experience that I had as district attorney of Philadelphia, when I tried to get judges to impose life sentences on habitual offenders. When that moment of sentencing comes, unless there is a sense on the part of the sentencing judge that it is fair to impose a life sentence, it simply does not happen.

Where we have realistic rehabilitation—that is literacy training so someone who leaves jail will be able to read and write, and job training so there is a way for that individual to support himself or herself—then if the person gets into future trouble, becomes a second offender and a third offender, then I think it is realistic to have life sentences for career criminals.

We do have an effective bill in the Federal system providing for mandatory sentences up to life in jail for career criminals who are found in possession of a firearm. That was a bill which I introduced in 1981 and finally was enacted in 1984, and it was expanded in 1986.

This amendment is directed at a very limited segment of the population, those who are 25 or younger, and who are eligible for parole or release within 5 years.

The amendment provides for an authorization of $18 million for the first year. I believe that there will be funds available from the appropriations subcommittee where I serve as ranking

Republican, and I think that this amendment would be a very, very positive step forward in providing this realistic rehabilitation for a narrow target group—the young offenders, up to 25 years of age, who are eligible for parole or release within 5 years.

Mr. President, there are approximately 1 million people incarcerated in prisons, jails, and juvenile facilities in this Nation. Of these incarcerated individuals, more than 75 percent have not completed high school, and most have few if any job skills. In some States, 60 percent of prison inmates cannot read at the sixth grade level.

It is my belief that criminal offenders, especially the juvenile, first and second offenders, should be given a chance at rehabilitation and gainful employment. That chance can only come through education.

With the provision to eliminate Pell grants for prisoners, that is contained in both the House and Senate versions of the crime bill, other resources to break the cycle of recidivism are needed. Young nonviolent offenders need a second chance, and education is the only opportunity they will have to receive that chance.

The amendment which I offer today, would authorize $18 million to provide the young offender, up to 25 years of age, who is eligible for parole within 5 years, to acquire an education while incarcerated. Up to $1,500 per young offender would be provided to States for tuition and books. An additional $300 would also be available for career guidance, substance abuse counseling, health education, and parenting skills training. States would be required to evaluate the effectiveness of the education, and study the impact of that education on recidivism rates, in order to qualify for funds under the program.

Given the impact that education and job training can have on repeat offenders, this amendment will help save money in the long run.

It is my understanding that this amendment has been accepted by the managers.

The PRESIDING OFFICER. The Chair recognizes the Senator from Rhode Island.

Mr. PELL. Mr. President, I would just like to congratulate the Senator from Pennsylvania on the offering of this amendment. I think it is an excellent one. It will lead to reduction in the rate of recidivism that is so apparent among our prisoners today.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thank both the Senator from Pennsylvania and the Senator from Rhode Island for this amendment. They have made a strong case for it.

Not long ago, I was up in Massachusetts at Mount Wachusett Community College, which had been providing the Pell grant programs for some State prisoners. I had a chance to talk to those who were involved in the educational programs. They recounted to me the numerical comparison between those who had some opportunity for continued education versus those who did not.

We made a judgment in this body to terminate these programs, and I believe that decision was regrettable. But it was an overwhelming vote here in the Senate.

This amendment is an attempt to target some resources on younger individuals who, as described by the Senator from Pennsylvania, are moving out into the community. To the extent that is possible, this amendment aims to at least give these individuals additional educational opportunity, so that they have a better chance of success in the world outside of prison. I think this amendment makes eminently good sense. As we all know, when you take the profile of individuals who are on death row, you will find that the great majority of them have never completed a high school education.

This is a very modest program. I think it is worthwhile. It is an important program, and I urge the Senate to accept it.

The PRESIDING OFFICER. Is there further discussion of the amendment.

If not, the question is on agreeing to the amendment.

The amendment (No. 2420) was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote.

The PRESIDING OFFICER. Without objection, the motion to lay on the table is agreed to.

AMENDMENT NO. 2421

(Purpose: To authorize a demonstration to test the effectiveness of prenatal education and counseling on student pregnancy outcomes)

Mr. SPECTER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] proposes an amendment numbered 2421.

Mr. SPECTER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On Page 1,000, before line 13, insert the following:

(T) demonstrations that are designed to test whether prenatal education and counseling provided to pregnant students, emphasizing the importance of prenatal care; the value of sound diet and nutrition habits; and the harmful effects of smoking, alcohol and substance abuse on fetal development.

Mr. SPECTER. Mr. President, this amendment would address the problem of pregnancies in the teen population by authorizing a demonstration project designed to test whether involving schools in providing prenatal education and counseling to pregnant students could have a positive effect on pregnancy outcomes.

Mr. President, this is a subject that I have been concerned about for more than a decade, when I saw for the first time a 1-pound baby, which was a very startling revelation to me—a 1-pound baby, a child about as big as the size of my hand, 16 ounces, sometimes 18 ounces, sometimes 20 ounces.

Such a child coming into this world is a human tragedy, because at such a low birthweight, there are medical problems that stay with that child for the balance of the child's life.

It is also an enormous financial drain, with the costs for very low birthweight children running in excess of $150,000 per child, sometimes as much as $200,000, until the child leaves the hospital. The cost involved in these 1-pound babies, low birthweight babies, is multibillions of dollars.

It is a subject which my bill—Senate bill 18, on comprehensive health care—addresses; a bill which I introduced on the first day of the 103d Congress back on January 21, 1993, and a measure which I intend to press, if and when health care legislation comes to the floor. Parenthetically, I hope it is very, very soon.

This amendment is directed at the problem generally by providing for prenatal education and counseling to pregnant students in schools. There is a great deal of controversy on the overall subject of sex education, a very complicated subject which is left for another day. But there is no doubt but when a young woman is pregnant there is absolutely no reason why that young woman should not be counseled in what it takes to care for herself during the pregnancy and what it takes for the care of the expected child.

Dr. Koop has outlined a program of a minimum of four prenatal visits and one postnatal visit, which would vastly improve the problem of these low birthweight babies.

It seems to me that the community health centers simply cannot reach this teen population, and at a minimum there ought to be information and counseling to these young women, so that they have the basic information to get proper nutrition for themselves and their expected child.

Senator MOYNIHAN has been a leader in the Senate and has identified the problem of unintended teen babies, children giving birth to babies, as the most important problem facing our country, an issue which we have to address in many contexts.

This is a modest step in terms of the counseling. But it could be very, very important to tens of thousands of women, and tens of thousands of children to be born to these young women

who come into the world weighing 1 pound—16, 18, 20 ounces. It is tough enough coming into the world weighing 8 pounds 10 ounces, which I understand my birthweight had been, let alone coming into the world weighing only a pound.

I think this could have a very profound effect on many, many lives in America.

When one talks of social ills in America today, the problem of increasing numbers of births to adolescents is always at the top of the list. Between 1986 and 1991, the rate of births to teens aged 15 to 19 rose 11.9 percent, from 50.2 percent to 62.1 births per 1,000 females. We must find programs to address the teen pregnancy problem and to reduce the rising costs associated with teen births, particularly low-birthweight births.

Low birthweight is the leading and most preventable cause of infant mortality. Each year about 7 percent, or 287,000, of the 4,100,000 American babies born in the United States are born of low birthweight, multiplying their risk of death and disability.

Infants who have been exposed to drugs, alcohol or tobacco in utero are more likely to be born prematurely and with low birthweight. These children are at increased risk of dying in their first year of life or suffering from long-term disabilities. I became interested in this problem, after visiting hospitals in Pittsburgh and Philadelphia and seeing 1-pound babies, whose chances for survival were severely jeopardized. If you weigh 16 or 20 ounces, it is a human tragedy.

Beyond the human tragedy of low birthweight there are the financial consequences. In 1990, the hospital-related costs for caring for all low-birthweight newborns totaled more than $2 billion, over $21,000 on average. For infants of extremely low birthweight hospitals costs often exceed $150,000.

It is generally recognized that prenatal care that begins early, continues throughout pregnancy, and is appropriate to the mother's level of health risk can effectively prevent low-birthweight births and improve birth outcomes.

Because teenage mothers are less likely to eat nutritiously or to get prenatal care, and are more likely to smoke or drink than older mothers, they are also more likely to give birth to low-birthweight infants.

This amendment would help to address this problem by authorizing a demonstration project to test whether involving schools in providing prenatal education and counseling to pregnant students, could have a positive effect on pregnancy outcomes. Education and counseling would emphasize the importance of prenatal care; the value of sound diet and nutrition habits, and the harmful effects of smoking and alcohol and substance abuse on fetal development. It is essential that we take advantage of every opportunity to provide pregnant women with information to ensure a healthy pregnancy outcome. My amendment ensures that an opportunity to provide this information is not missed.

Again, I understand that the managers of the bill have agreed to accept the amendment.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I urge the Senate to accept this amendment. It encourages the Secretary, as part of the legislation to fund and support innovative and creative programs for schools, to undertake the kind of initiative described in the amendment.

In the health legislation that was passed out of our Committee on Human Resources, we have a very important provision for the development of school health information and services, which was worked out in a bipartisan fashion. I am very hopeful that that provision will eventually see successful passage.

I think that there is a great need for the services described in this amendment. The need is particularly great in the urban areas of this country, not only with regard to teenage pregnancy, but also with regard to young children who are exposed to both substance abuse and physical abuse. These children grow up in a very harsh and difficult climate, and have very important and serious health needs, both physical and mental.

We have shaped into our health legislation a modest but important down payment in terms of making a range of different health services available, with parents and community personnel to be involved in shaping the program. I think there is a great need for these services.

I am, therefore, very hopeful that we can have an even more expansive and elaborate program than the one outlined in this amendment. But this amendment will certainly give a clear indication that these kinds of initiatives will be supported. I think there is a very serious need for them and I welcome the opportunity to support the initiative.

I urge that we accept the amendment.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the Senator from Massachusetts for his support and comments.

This amendment would provide allowable use of funds for innovative education, as the Senator from Massachusetts states.

There has been a suggestion made that a slight addition be added to the amendment, the language "could have on students."

So at this time, I send a modification of my amendment to the desk.

The PRESIDING OFFICER. The Senator has a right to modify his amendment.

The amendment (No. 2421), as modified, is as follows:

On Page 1,000, before line 13, insert the following:

(T) demonstrations that are designed to test whether prenatal education and counseling provided to pregnant students, emphasizing the importance of prenatal care; the value of sound diet and nutrition habits; and the harmful effects of smoking, alcohol and substance abuse on fetal development could have on students.

Mr. SPECTER. Mr. President, if there is no other debate, I ask that the amendment be adopted. I understand it is agreeable to the manager on the Republican side of the aisle.

The PRESIDING OFFICER. Is there further discussion of the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 2421), as modified, was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote.

Mr. SPECTER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from California [Mrs. FEINSTEIN].

ZERO TOLERANCE FOR GUNS IN SCHOOLS

Mrs. FEINSTEIN. Mr. President, I rise to speak about an amendment which you authored and I cosponsored, Mr. President, which is entitled "Zero Tolerance for Guns in Schools." From the time that we presented this amendment publicly, I am very pleased that the chairman of the committee has accepted the amendment and that the Senator from Massachusetts has included that amendment in bill language.

I think it is appropriate, though, that we both speak about this amendment. I would like to make a few remarks and then replace you in the chair so that you will have an opportunity to do the same.

Mr. President, I took a look at the Congressional Research Service report on each State and what those States did with respect to guns in schools, what policies States had to regulate guns in schools. What I found was a wide variation, a wide panoply, if you will, of rules and regulations; some more effective than others.

So then I took a look at my own State. Do we really have a problem with guns in schools in California?

Mr. President, I must report to you, most sadly, we have a major problem of guns in schools, despite the fact that the California legislature passed a law which said schools have the right to put forward legislation. Again, the legislation varies and the penalties vary.

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The thought has occurred to me that we should have a well-stated policy all across this United States that schools are for children to learn and that we will not tolerate guns in schools.

If you receive Federal money as a school, you must have in place a zero tolerance for guns in schools. If a youngster brings a gun to school, that youngster under this provision would be expelled for 1 year. Now, the principal has an ability, in our amendment, to make an exception if there is good reason to make that exception. But the point I believe we want to establish is that you cannot learn in school if someone is sitting next to you with a loaded .45 or loaded .38, or whatever the weapon may be.

The San Francisco Chronicle on July 11 did a poll. What they found—I do not have a big chart—but, "Bay High Schoolers Surrounded By Guns, Violence; Survey Finds Weapons In School." "Students in the San Francisco Bay Area who say they have carried a weapon to school: 22 percent." This is a national survey that finds that 13 percent carry weapons to school.

What our amendment would say is henceforth this is not permissible. Henceforth, if you carry a weapon to school, regardless, there is a penalty and it is expulsion for not less than 1 year.

I might tell you, 3 weeks ago I went into a classroom in Hollywood, CA. This was not a troubled community. This is Hollywood, CA. It was a fourth grade classroom. And every youngster in that classroom spoke eloquently about how afraid they were to go to school.

I asked the question, "How many of you hear gunfire?"

I thought maybe a sprinkling of hands would go up. Every single child's hand went up in that classroom.

I said, "How many of you have seen an adult attack another adult?" And 60 percent of the hands went up in the classroom.

What we are trying to do, Mr. President, and I believe you agree with me, is say in every way, in every shape, in every form, we need to begin to address violence in our society—whether it is in a crime bill now in conference, whether it is in an education bill now on the floor of the U.S. Senate, whether it is in Commerce bills or Ag bills or any other kind of bill. We know there is a problem out there with violence. I go home and I find the State legislature is talking about how much money they can appropriate for metal detectors in schools—metal detectors in schools. Youngsters should not have to go through metal detectors to go to school. What we are doing in this amendment—and I am so grateful to the committee chairman for accepting the amendment—is saying there is no place, there is no excuse, there is no rationale to have a gun in a public school in the United States of America.

It is legislation whose time has come. And I believe it is legislation for which legions of American children are going to be grateful.

In the $13 billion in this bill, every school will have to subscribe to a policy: No guns. If you bring a gun, you are out for a year.

So, I thank the Chairman for his leadership in this issue. I was pleased to join with him. I am thankful to the Senator from Massachusetts. I am also thankful for the many letters and phone calls I have had from all across this Nation saying thank you for finally doing something—at last—so our children can go to school in safety.

Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Idaho.

Mr. CRAIG. Mr. President, let me associate myself with the remarks of the Senator from California.

I take this opportunity to do so because it is almost unique that we can agree on an issue related to firearms in our country today. But I do so because she is absolutely right. America's schools must be safe havens for education and learning and that cannot be accomplished if the over 250,000 handguns that it is reported each day come to our public schools are allowed to continue to come to them. There is absolutely no reason why that would occur.

Except there is a reason. And I think it is a reason important for us to understand. While there may be the element of machoism in today's society for people, even in their youth, to carry guns in order to be so viewed by their peers for doing so, there is, amongst some of our young people, the element of fear, fear that they might be harmed. And they would choose to use a gun in their defense for that purpose.

That is a tragic but very true statement. So I think, while this legislation and the effort of the two Senators involved is well-founded, and I support it, clearly we must go beyond just that in our society to recognize there is something fundamentally wrong. School students did not always bring handguns to school. If they had a dispute, they solved it with their knuckles. That happened in the schoolyard, when Billy pushed Johnny for whatever reason.

Tragically, today there is a mindset in our society that one provokes violence in a way that is lethal. That is because that schoolchild the Senator from California is talking about has literally spent thousands and thousands of hours watching television in which acts of real violence were committed. By the time that student graduates from elementary school, he or she will have viewed over 250,000 examples of extreme violence on television.

So why are they bringing guns today? Partly because it is in the culture. It is in the culture that they have been viewing for so long that we have tolerated extreme acts of violence to be viewed on our televisions. That is why 30 years ago it did not happen, even though a handgun or a long gun might have been available to a young person.

Senator KOHL and I recognized this problem some months ago when we were debating the crime bill here and introduced legislation that would make it prohibitive for a juvenile to own or possess a handgun—a gun, for that matter—except under very limited circumstances. So this takes the effort one step further, as it should.

But let us remember that this is merely a Band-Aid on a much, much larger problem in our society. While the Senator from California and I would disagree about rights and access and ownership and all of that kind of thing, obviously we do not disagree on the fact that a very real problem exists in society and there must be very real consequences for individuals' acts. And the very real consequence is spelled out in this bill: Expelled for 1 year if you bring a gun to school. For the first time we are saying to our young people, if you act outside the law, you will be treated accordingly.

For the last 30 years we have pampered. We said, oh, it is not the individual who is in error, it is society that is in error for allowing them to have tools to provoke acts of violence because individuals are not necessarily violent.

For the first time—in a little way—we are saying it is an individual act and the individual is responsible, the juvenile is responsible and we are going to treat them accordingly. And that is appropriate—as it should be. I find myself in support of this provision of the act. I think it is an important step forward. Clearly the schools of America have to be safe for learning. It is not a place to bring a gun.

The PRESIDING OFFICER (Mrs. FEINSTEIN). The manager, the Senator from Massachusetts?

Mr. KENNEDY. Madam President, I will be glad to yield to my colleague. I see on the floor Senator MOSELEY-BRAUN, who has an amendment. We have until noontime. Then I understand the Senate will be in recess out of respect for our recently departed friend and colleague, Hugh Scott of Pennsylvania. Then we will resume again at 3.

I want to take a moment to indicate to the membership where we are. I know Members want to speak on certain measures—if we can get them worked out and accepted, whatever time we have can be utilized for debating items that may be in controversy. But obviously Members have the right

to speak on any of the matters they desire.

So I hope we could at least get Senator MOSELEY-BRAUN's amendment laid down prior to the time of 12 o'clock. Then we can deal with that issue, finding out during the recess time whether it is going to necessitate a rollcall; and then, just after we dispose of that, it is my hope that we can consider Senator SIMON's amendment regarding the longer school year. Then following that we would get into the formula amendment of Senator COCHRAN, which I think will take the time of the afternoon when we will have the greatest attention and interest.

That will be the way that I hope we will proceed. Again, I hope that if other Members have amendments that they will be in touch with us so that we can process them during the time of the recess, and we will be able to move the legislation forward in a timely way.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. Madam President, I will be brief so there will be time for the Senator from Illinois to offer an amendment.

I appreciate the remarks of the Senator from California [Mrs. FEINSTEIN]. Senator FEINSTEIN and I have worked many, many months on this legislation. It became law in Goals 2000. It will now, with the help of Senator KENNEDY and Senator JEFFORDS and the committee, become law when this bill is eventually signed by the President. We very much appreciate that.

I understand that some do not necessarily like this amendment. It is not their favorite amendment. But the fact is, the Senator from California [Mrs. FEINSTEIN] and I feel very strongly that you cannot discuss learning unless you first address safety. Kids cannot learn in school when they fear for their safety.

Things have changed in American schools, regrettably. I went to a very small school. I graduated in a high school class of 9 in a town of 300 people. That was a small town, a small school. Senator CRAIG talked about the old days. In the old days, the major problems in school were truancy and speaking out of turn and pushing someone.

What are the problems in today's schools? Go to any school and ask, especially in the major cities. The problems are guns and violence and drugs and teenage pregnancies. Things have changed radically.

On the question of safety, if we do not address the issue of guns in schools, we can spend a lot of money on academic programs, but kids are not going to be able to learn because they are going to sit there during the day and worry about their safety.

I would like to say that Senator MOSELEY-BRAUN is a cosponsor of our amendment. We appreciate that very much. I recently visited a school 10 or 15 blocks from this building. I met with a wonderful principal, Mr. Neal. He runs a good school. He has one of the best reputations in this city. I met with wonderful kids in that school who come from the projects and from backgrounds that are difficult. The school has bars on all of its windows. I walked through a metal detector. The first person I saw was not a smiling teacher. It was a security guard at a metal detector.

I left that school thinking how much I regret that it has come to this. I like this principal and I hope these kids do well and I met teachers who were wonderful.

Only weeks after that, in that same building, down near the cafeteria where I visited, some kid bumped another at a water fountain and the other pulled out a pistol and shot the kid four times. The fact is, this scene is going on all over this country, and we must address it.

We have constructed a proposal that says there will be no more excuses and there will be zero tolerance, and every student and every parent across this country ought to understand something fundamental and simple: You cannot bring a gun to an American school. If you do, there will be a certain and exact penalty. We provide a 1-year expulsion.

Our proposal has sparked a lively debate. Some say you are out of line, this is very unreasonable. I say, look, we are way past the time where we make excuses for bad behavior. Anybody who thinks they can legitimately bring a gun through the front door of a school is not thinking at all. If we are going to have people who bring guns to school because they do not think and who settle disputes in schools with handguns or other shooting devices, then, in my judgment, they deserve a certain punishment.

I hope that everybody in this country understands a year or two from now that our law says nobody is going to bring guns to school. Do not even think about bringing a gun to school. The penalty is too great. We provide an exception on a case-by-case basis. If there is something unusual, the head of the school district can make a decision that this case is exceptional: The kid meant no harm, it was a mistake; they are going to go hunting after school; there is a starter pistol in the backpack for the gym program. If it is a legitimate mistake, the school administrator can make that exception.

One other point. Senator FEINSTEIN and I do not propose to be concerned about firearms used in an ROTC program, about firearms used in a hunter safety course, or about firearms used in connection with historical re-enactment. People asked me questions about that. No, we are not talking about that. We are talking about students who bring guns to schools.

The Senator from California, I think, has been doing a wonderful job on these issues. I am pleased to work with her on this legislation. It is now law, as enacted in Goals 2000, and I hope this will remain law when this bill is signed by the President. We will have changed the mindset and changed the attitude all across this country as to whether anybody ought to dare try to bring a gun to school. Then we will have restored some safety in America's classrooms. We will have fostered an environment in which American children can learn the way I know they are capable.

I understand some other amendments will be offered prior to the 12 o'clock hour. I yield the floor.

Ms. MOSELEY-BRAUN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. MOSELEY-BRAUN. Madam President, at the outset, I would like to associate myself with the remarks of my colleague from North Dakota, as well as the Presiding Officer's remarks, in support of the guns in school legislation. I could not agree with you more.

While my colleague said I was a cosponsor, I do not think I am yet, so I ask unanimous consent that I be added as a cosponsor.

The PRESIDING OFFICER (Mr. DORGAN). Without objection, it is so ordered.

Ms. MOSELEY-BRAUN. Mr. President, I ask unanimous consent that the pending amendment be laid aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2422

(Purpose: To amend the Higher Education Act of 1965 to require institutions of higher education to disclose participation rates, and program support expenditures, in college athletic programs, and for other purposes)

Ms. MOSELEY-BRAUN. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois [Ms. MOSELEY-BRAUN], for herself and Mr. KENNEDY, proposes an amendment numbered 2422.

Ms. MOSELEY-BRAUN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1357, after line 25, insert the following:

SEC. . HIGHER EDUCATION ACT OF 1965.

(a) SHORT TITLE.—This section may be cited as the "Equity in Athletics Disclosure Act".

(b) FINDINGS.—The Congress finds that—

(1) participation in athletic pursuits plays an important role in teaching young Americans how to work on teams, handle challenges and overcome obstacles;

(2) participation in athletic pursuits plays an important role in keeping the minds and bodies of young Americans healthy and physically fit;

(3) there is increasing concern among citizens, educators, and public officials regarding the athletic opportunities for young men and women at institutions of higher education;

(4) a recent study by the National Collegiate Athletic Association found that in Division I–A institutions, only 20 percent of the average athletic department operations budget of $1,310,000 is spent on women's athletics; 15 percent of the average recruiting budget of $318,402 is spent on recruiting female athletes; the average scholarship expenses for men is $1,300,000 and $505,246 for women; an average of 143 grants are awarded to male athletes and 59 to women athletes;

(5) female college athletes receive less than 18 percent of the athletics recruiting dollar and less than 24 percent of the athletics operating dollar;

(6) male college athletes receive approximately $179,000,000 more per year in athletic scholarship grants than female college athletes;

(7) prospective students and prospective student athletes should be aware of the commitments of an institution to providing equitable athletic opportunities for its men and women students; and

(8) knowledge of an institution's expenditures for women's and men's athletic programs would help prospective student and prospective student athletes make informed judgments about the commitments of a given institution of higher education to providing equitable athletic benefits to its men and women students.

(c) AMENDMENT.—Section 485 of the Higher Education Act of 1965 (20 U.S.C. 1092) is amended by adding at the end the following new subsection:

"(g) DISCLOSURE OF ATHLETIC PROGRAM PARTICIPATION RATES AND FINANCIAL SUPPORT DATA.—

"(1) DATA REQUIRED.—Each institution of higher education that participates in any program under this title, and has an intercollegiate athletic program, shall annually submit a report to the Secretary that contains the following information:

"(A) For each men's team, women's team, and any team that includes both male and female athletes, the following data:

"(i) The total number of participants and their gender.

"(ii) The total athletic scholarship expenditures.

"(iii) A figure that represents the total athletic scholarship expenditures divided by the total number of participants.

"(iv) The total number of contests for the team.

"(v) The per capita operating expenses for the team.

"(vi) The per capita recruiting expenses for the team.

"(vii) The per capita personnel expenses for the team.

"(viii) Whether the head coach is male or female and whether the head coach is full or part time.

"(ix) The number of assistant coaches that are male and the number of assistant coaches that are female and whether each particular coach is full time or part time.

"(x) The number of graduate assistant coaches that are male and the number of graduate assistant coaches that are female.

"(xi) The number of volunteer assistant coaches that are male and the number of volunteer assistant coaches that are female.

"(xii) The ratio of participants to coaches.

"(xiii) The average annual institutional compensation of the head coaches of men's sports teams, across all offered sports, and the average annual institutional compensation of the head coaches of women's sports teams, across all offered sports.

"(xiv) The average annual institutional compensation of each of the assistant coaches of men's sports teams, across all offered sports, and the average annual institutional compensation of the assistant coaches of women's sports teams, across all offered sports.

"(B) A statement of the following data:

"(i) The ratio of male participants to female participants in the entire athletic program.

"(ii) The ratio of male athletic scholarship expenses to female athletic scholarship expenses in the entire athletic program.

"(2) DISCLOSURE TO PROSPECTIVE STUDENTS.—An institution of higher education described in paragraph (1) that offers admission to a potential student shall provide to such student, upon request, the information contained in the report submitted by such institution to the Secretary under paragraph (1), and all students offered admission to such institution shall be informed of their right to request such information.

"(3) DISCLOSURE TO THE PUBLIC.—An institution of higher education described in paragraph (1) shall make available to the public, upon request, the information contained in the report submitted by such information to the Secretary under paragraph (1).

"(4) SECRETARY'S DUTY TO PUBLISH A REPORT OF THE DATA.—On or before July 1, 1995, and each July 1 thereafter, the Secretary, using the reports submitted under this subsection, shall compile, publish, and submit to the appropriate committees of the Congress, a report that includes the information contained in such reports identified by (A) the individual institutions, and (B) by the athletic conferences recognized by the National Collegiate Athletic Association and the National Association of Intercollegiate Athletics.

"(5) DEFINITION.—For the purposes of this subsection, the term 'operating expenses' means all nonscholarship expenditures.".

(d) EFFECTIVE DATE.—The amendment made by subsection (c) shall take effect on July 1, 1994.

Ms. MOSELEY-BRAUN. Mr. President, Senators KENNEDY, SIMON, HARKIN, MIKULSKI, and I introduced several bills last September as a cooperative effort to address the widespread gender inequities in our Nation's schools. These bills, which are collectively known as the Gender Equity in Education package, include the Equity in Education Amendments Act, the Women's Educational Equity Restoration Act, the Fairness in Education for Girls and Boys Act, and the Equity in Athletics Disclosure Act.

Mr. President, all four of these bills are important because they will help the Secretary of Education enforce title IX of the Education Amendments of 1972, the principal Federal statute prohibiting sex discrimination in education.

S. 1513 includes much of the gender equity in education package. However, one major component, the Equity in Athletics Disclosure Act, is not yet included in the Improving America's Schools Act. The amendment now before the Senate will make this final gender equity initiative a part of S. 1513.

Mr. President, title IX of the Education Amendments of 1972 has helped to eliminate many discriminatory policies—such as rules that only boys could take shop classes. Yet, because institutions of higher education are not required to disclose gender equity information regarding their intercollegiate athletic programs, many are still not in full compliance.

In fact, the National Collegiate Athletic Association [NCAA], the American Council on Education [ACE], and my colleague from Illinois—Congresswoman CARDISS COLLINS—have all documented the prevalence of gender inequities in intercollegiate athletics.

In 1992, the NCAA conducted a one-time study on gender equity in men's and women's intercollegiate athletic programs at all Division I–A schools. As expected, this study found that female college athletes receive less than 18 percent of the athletic recruiting dollar and less than 24 percent of the athletic program operating dollars. This report also found that the average scholarship budget for men's teams is $1.3 million but only $500,000 for women's teams.

Mr. President, the American Council on Education [ACE] has also documented gross gender inequities in intercollegiate athletic coaching staffs. In a recent survey of 1,410 post-secondary institutions, ACE found that women represent only 8 percent of athletic directors and only 6 percent of sports information directors.

Over the last 3 years, Congresswoman COLLINS has also used her position as chairwoman of the House Commerce, Consumer Protection, and Competitiveness Subcommittee to highlight the gender inequities which plague intercollegiate athletics.

In three separate hearings, student athletes and coaches alike have testified that women's teams often have poorer facilities for training; worse hours for practice and competition; inferior travel accommodations; and little, if any, promotional support.

Mr. President, the American Association of University Women have supported this legislation strongly and they say:

> By requiring colleges and universities to disclose their expenditures and participation rates in women's and men's sports programs, this bill would help address a key problem of bias against women and girls in schools.

I ask unanimous consent that their letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

AMERICAN ASSOCIATION
OF UNIVERSITY WOMEN,
Washington, DC, July 18, 1994.

Hon. CAROL MOSELEY-BRAUN,
U.S. Senate, Washington, DC.

DEAR SENATOR MOSELEY-BRAUN: On behalf of AAUW's 150,000 members nationwide, I am writing to express our strong support for including the Equity in Athletics Disclosure Act (S 1468) in the Elementary and Secondary Education Act. By requiring colleges and universities to disclose their expenditures and participation rates in men's and women's sports programs, S 1468 would help address a key problem of bias against women and girls in school.

As you know, Title IX of the Education Amendments of 1972 prohibits sex discrimination in institutions receiving federal funds. Yet a 1992 National Collegiate Athletics Association study found that male athletes receive more than two-thirds of all college scholarships and five times more money in their recruitment budget. S 1468 would provide the foundation for making Title IX effective in our college and university athletic programs by improving access to information about compliance for individual schools.

Reseach reported in "The AAUW Report: How Schools Shortchange Girls" shows that extracurricular activities play an important role in teenagers' socialization and self-concepts. Unfortunately, during secondary school, boys' participation in athletics is still almost twice that of girls. Although girls enjoy participation in sports as much as boys do, they often shy away because of the way they see themselves in relation to sports. We believe the lack of female role models in athletics and the lesser opportunities these girls see in their schools and in their futures greatly contributes to their reticence and biased notions of sports. If we hope to enhance girls' participation in athletics, with all its attending benefits, we must provide for equitable opportunities at all levels of education.

We commend you for your leadership on this issue. Please contact April Osajima on our staff if we can be of any assistance.

Sincerely,

JACKIE DEFAZIO.

Ms. MOSELEY-BRAUN. The amendment addresses this gender inequity by requiring institutions of higher education that receive Federal funds to disclose information on participation rates, coaching staffs, and program expenses for each of their men's and women's intercollegiate athletic teams.

The amendment would also require institutions to disclose upon request this information to the general public and to students who need this information in order to make informed decisions regarding their education. It would also require them to provide this information to the Secretary of Education, who would then report it to the Congress.

Mr. President, the NCAA has begun to address the problem of gender inequity through its 1992 study.

Mr. KENNEDY. Will the Senator yield for a moment?

I see that the hour is just moving to 12 o'clock, at which time we are going to recess in respect for the memory of our colleague, Senator Scott.

I ask unanimous consent that when we resume, the Senator from Illinois be recognized to complete her statement on this very important amendment.

Ms. MOSELEY-BRAUN. Mr. President, I have exactly another 30 seconds worth of dialog. If it is all right, I would just as soon conclude at this time.

Mr. KENNEDY. I so ask unanimous consent.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. MOSELEY-BRAUN. Again, very briefly, the NCAA has taken its own initiative, but it needs help. It is very clear that they need the support for disclosure of this information.

Previously, when the NCAA attempted to get this information, they received 20 percent voluntary compliance. This legislation will give 100 percent information disclosure regarding fairness in our athletic programs.

I would like to conclude my remarks by saying we will never be able to achieve excellence in education unless we eliminate gender bias. This legislation goes a long way in providing us with the basis to do so.

I thank the Chair. I thank the chairman for his allowing me time to continue.

Mr. KENNEDY. Mr. President, I see that the hour of 12 noon has arrived. I think there will be a brief further discussion about this when we resume at 3 o'clock. We may very well have the vote at that time and then follow, hopefully, the sequence which I have outlined earlier. And we hope, as I said, that Members who have other amendments will inform the staff or Senator JEFFORDS and myself.

RECESS UNTIL 3 P.M.

The PRESIDING OFFICER. Under the previous order, the hour of 12 noon having arrived, the Senate will stand in recess until the hour of 3 p.m.

Thereupon, at 12:02 p.m., the Senate recessed until 3 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. LIEBERMAN.)

IMPROVING AMERICA'S SCHOOLS ACT OF 1994

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The pending business is the amendment offered by the junior Senator from Illinois [Ms. MOSELEY-BRAUN].

Who seeks recognition?

Mr. PELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I see my friend and colleague, the Senator from Illinois, on the floor.

We had anticipated that we would move ahead with the amendment of Senator MOSELEY-BRAUN. But just to move the whole process forward I ask unanimous consent that it be temporarily set aside, and that we consider the amendment of the senior Senator from Illinois.

Mr. GORTON. Reserving the right to object, may I ask what the status is with respect to the amendment of the Senator from Washington?

Mr. KENNEDY. Mr. President, as I understand, the Senator's amendment is preserved. At any time we can call it back. As I understand it, regular order brings back the amendment of the Senator from Washington. I had understood that there were continuing negotiations that were taking place on the Senator's amendment. We were just attempting to expedite.

Mr. GORTON. The amendment, the basic underlying issue, has been set aside for an amendment by Senator MOSELEY-BRAUN, and now the Senator seeks to set aside that one for a third amendment by the senior Senator from Illinois.

Mr. KENNEDY. The Senator is correct.

Mr. GORTON. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Chair recognizes the Senator from Illinois [Mr. SIMON].

AMENDMENT NO. 2423

(Purpose: To establish the Longer School Year Incentive Act of 1994)

Mr. SIMON. Mr. President, in behalf of Senator BYRD, Senator PELL, Senator CHAFEE, Senator KOHL, and myself, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Illinois [Mr. SIMON], for himself, Mr. BYRD, Mr. PELL, Mr. CHAFEE, and Mr. KOHL, proposes an amendment numbered 2423.

Mr. SIMON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1205, between lines 4 and 5, insert the following:

"PART D—LONGER SCHOOL YEAR

"SEC. 13401. SHORT TITLE.

"This part may be cited as the 'Longer School Year Incentive Act of 1994'.

"SEC. 13402. FINDINGS.

"The Congress finds as follows:

"(1) A competitive world economy requires that students in the United States receive education and training that is at least as rigorous and high-quality as the education and

training received by students in competitor countries.

"(2) Despite our Nation's transformation from a farm-based economy to one based on manufacturing and services, the school year is still based on the summer needs of an agrarian economy.

"(3) For most students in the United States, the school year is 180 days long. In Japan students go to school 243 days per year, in Germany students go to school 240 days per year, in Austria students go to school 216 days per year, in Denmark students go to school 200 days per year, and in Switzerland students go to school 195 days per year.

"(4) In the final four years of schooling, students in schools in the United States spend a total of 1,460 hours on core academic subjects, less than half of the 3,528 hours so spent in Germany, the 3,280 hours so spent in France, and the 3,170 hours so spent in Japan.

"(5) American students' lack of formal schooling is not counterbalanced with more homework. The opposite is true, as half of all European students report spending at least two hours on homework per day, compared to only 29 percent of American students. Twenty-two percent of American students watch five or more hours of television per day, while less than eight percent of European students watch that much television.

"(6) More than half of teachers surveyed in the United States cite 'children who are left on their own after school' as a major problem.

"(7) Over the summer months, disadvantaged students not only fail to advance academically, but many forget much of what such students had learned during the previous school year.

"(8) Funding constraints as well as the strong pull of tradition have made extending the school year difficult for most States and school districts.

"(9) Experiments with extended and multitrack school years have been associated with both increased learning and more efficient use of school facilities.

"SEC. 13403. PURPOSE.

"It is the purpose of this part to allow the Secretary to provide financial incentives and assistance to States or local educational agencies to enable such States or agencies to substantially increase the amount of time that students spend participating in quality academic programs, and to promote flexibility in school scheduling.

"SEC. 13404. PROGRAM AUTHORIZED.

"The Secretary is authorized to award grants to States or local educational agencies to enable such States or agencies to support public school improvement efforts that include the expansion of time devoted to core academic subjects and the extension of the school year to not less than 210 days.

"SEC. 13405. APPLICATION.

"Any State or local educational agency desiring assistance under this part shall submit to the Secretary an application at such time, in such manner, and accompanied by such information as the Secretary may require.

"SEC. 13406. FUND ALLOCATION.

"(a) FUNDING.—Of the funds appropriated pursuant to the authority of section 13501 for each fiscal year, the Secretary may reserve not more than 50 percent of such funds for such year to carry out this part.

"(b) AVAILABILITY.—Funds made available under subsection (a) for any fiscal year shall remain available until expended.

On page 1193, line 21, insert "and not used to carry out part D for such year" after "year".

On page 1194, line 2, insert "(other than part D)" after "title".

On page 1195, line 17, insert "(other than part D)" after "title".

On page 1195, line 25, insert "(other than part D)" after "title".

On page 1198, line 4, insert "(other than part D)" after "title".

On page 1198, line 7, insert "(other than part D)" after "title".

On page 1198, line 13, insert "(other than part D)" after "title".

On page 1198, line 20, insert "(other than part D)" after "title".

On page 1198, line 24, insert "(other than part D)" after "title".

On page 1199, line 3, insert "(other than part D)" after "title".

On page 1199, line 16, insert "(other than part D)" after "title".

On page 1199, line 18, insert "(other than part D)" after "title".

On page 1199, line 23, insert "(other than part D)" after "title".

On page 1200, line 1, insert "(other than part D)" after "title".

On page 1200, line 15, insert "(other than part D)" after "title".

On page 1200, line 24, insert "(other than part D)" after "title".

On page 1201, line 5, insert "(other than part D)" after "title".

On page 1202, line 20, insert "(other than part D)" after "title".

On page 1202, line 22, insert "(other than part D)" after "title".

On page 1203, line 6, insert "(other than part D)" after "title".

On page 1203, line 18, insert "(other than part D)" after "title".

On page 1204, line 2, insert "(other than part D)" after "title".

On page 1204, line 4, insert "(other than part D)" after "title".

On page 1204, line 10, insert "(other than part D)" after "title".

On page 1204, line 18, insert "(other than part D)" after "title".

On page 1204, line 22, insert "(other than part D)" after "title".

On page 1205, line 5, strike "D" and insert "E".

On page 1205, line 6, strike "13401" and insert "13501".

Mr. SIMON. Mr. President, this sets aside up to $100 million of discretionary spending under title 13 by the Secretary of Education for the purpose of encouraging longer school years. We all know that education has to receive a higher priority if we are to do for the future what we ought to do for this country. That includes hours in school, and it includes days in school.

For example, today in Japan you go an average of 243 days a year. In Germany, you go an average of 240 days a year. We go an average of 180 days a year. Why do we go 180 days a year? In theory so our children can go out and harvest the crops.

I see my friend from Washington on the floor, my friend from Mississippi on the floor, from Massachusetts, and from Rhode Island on the floor. The children in those States, and in an agricultural State like Illinois, are no more going out and harvesting crops in the summertime. I live at Route 1, Makanda, IL, population 402. Even in Makanda, IL, they are not going out and harvesting the crops.

If you look at the hours in school, the average hours of high school instruction per year—it is not simply the days, it is the hours we spend in school also. In Germany it is 882 hours; France, 820 hours; Japan, 792 hours; the United States, 365 hours. Can we learn as much in 180 days as our friends in Japan do in 243 or in Germany in 240? To ask the question is to answer it. We know the answer to that question.

Title 13 is designed to bring innovation and flexibility. But the reality is it has not brought much of any of those things. It has just been kind of a largess for school districts. If that is what we want to create, we can.

But it is interesting that a recent study by the Education Department said that this could be a powerful vehicle for educational reform if it were focused more. The study specifically recommended that local school districts "concentrate chapter 2—it used to be chapter 2, it is now called title 13—funds on one specific activity or program relating to reform, or an educational priority, in order to maximize the potential of funds would make a difference."

We have to face up to some reality. Let us just say that the Secretary of Education decides to use all $100 million. In the billions that we spend in this country, $100 million is not very much money. Let us just say the Secretary determines we can pay $30 per student to assist schools that go from 180 days to 210. That is the period that we are asking for in this amendment that would be increased to. If they do it, they could get $30 per student, not a lot of money. It is enough money to cause every school board to talk about it; to consider it, and a very few schools are moving in that direction now. We need to do more. We need to emphasize education much more than we have been.

Other nations are putting their resources into education as we are not. We make great speeches about education on the floor. Every Senator is an education Senator. Every President is an education President. Every Member of the House is an education House Member. This is a chance to really do something, to really improve education in our country. My hope is that the amendment will be adopted.

The PRESIDING OFFICER. Is there further debate?

Mr. KENNEDY. Mr. President, I am looking for our good friends and colleagues to address this issue. I for one personally think that it is well worth trying to encourage an extended school year. We have been attempting to work out the different provisions of the legislation. We have taken the old title II and moved that into a teacher training

program. And now the amendment comes which will take a very sizable amount of resources.

Can the Senator explain to us? In terms of its relationship, is he carving out this amount of money from title 13?

Mr. SIMON. No. It simply says the Secretary of Education may designate up to $100 million. So if the Secretary designates zero dollars, there is no violation. If the Secretary designates $10, there is no violation. This gives the Secretary some flexibility. But obviously it is a signal from Congress to do this.

Mr. KENNEDY. Mr. President, with that understanding, I would urge the Senate to accept the amendment.

Mr. PELL. Mr. President, I would like to add a word of support for this idea. I know I have felt very strongly about this for years. I always carry this agenda book with me, and in here I have some of these figures: The Soviet Union has 210 days; Canada, 200; Thailand, 220, and on ad infinitum.

I think it is a wonderful amendment. I would like to see it stronger and with more money. But this is about the amount that can be digested. It is excellent work.

Mrs. KASSEBAUM. Mr. President, I apologize to the Senator from Illinois and the Senator from Massachusetts. I did not quite understand. Did the Senator say there would be no chapter II money that would be withdrawn?

Mr. SIMON. This is the old chapter II. It is title XIII now. What it does is, it says up to $100 million may be designated by the Secretary of Education for this purpose.

Mrs. KASSEBAUM. Mr. President, I think all of us are intrigued by, if not supporting of, a longer school year. But I also am a strong believer that this is a local decision. I think that once we start adding money for encouraging a longer school year, we are going to be into major policy decisions that I think are best left up to a school district and to a State.

Mr. SIMON. If my colleague will yield. Yes, we are leaving this up to the local schools. But what we have found through the years is that when we have a little carrot out there to help schools, whether it is vocational education or whatever it is, it does help move people in the right direction when we see a national need. I do not think anyone can dispute the figures Senator PELL just used, and that we are way behind other countries in terms of hours and school days.

So this is a nudge—and I have to confess, a slight nudge —in that direction.

Mrs. KASSEBAUM. Mr. President, I know that Senator JEFFORDS is on his way to the floor. I think he wants to address this issue.

Mr. KENNEDY. Mr. President, with that understanding, I ask that we temporarily set aside this amendment.

The change in this amendment is rather than having a separate fund, that would be designated. For now it is purely permissive and is purely discretionary, up to the Secretary. I think we are going to have to probably work this through in terms of the conference, in any event. This is somewhat different in terms of what was initially proposed. I am glad to wait until Senator JEFFORDS comes here. But it is, as I understand it, significantly different than either adding another $100 million or carving out that amount of money from the programs that were in existence. But I am more than glad to wait for the Senator from Vermont.

Mrs. KASSEBAUM. Mr. President, I would like to set this aside until he has a chance to comment.

Mr. GRAMM. Reserving the right to object. I had intended to speak for a moment on the crime bill and on health care. Maybe we can hold this unanimous consent request until I have spoken. That would give the Senator from Vermont an opportunity to come over here and speak. Given that I intend to have the floor for about 10 minutes, perhaps it would save the Senate's time to simply allow me to speak, and then if Senator JEFFORDS appears, the debate can continue on that amendment.

Mr. KENNEDY. I am glad to accommodate. The Senator from Illinois has another amendment relative to this bill, that he wanted to process. We are trying to move this process forward. We only had a limited time this morning and, quite appropriately, we took time this afternoon. We are now at the hour of 3:15, and we have a number of important amendments.

Obviously, people can, under the Senate rules, speak. We are attempting to move this process forward. So we have been trying to ask the cooperation of the Members. I certainly cannot preclude any Member from speaking.

We reached the situation last evening at 8 o'clock where the managers were here and prepared to deal with serious matters, and we were unable to get the Members here to consider these issues.

This is an enormously important education bill. We have to abide by the Senate rules, obviously. I would like to see if we could not make further progress. Obviously, the Senator is entitled to speak at any time.

Mr. GRAMM. Well, Mr. President, I would be happy to try to accommodate my colleagues. Why do I not try to go ahead and truncate what I wanted to say about the crime bill and health care and, in the meantime, if somebody wants to call the Senator from Vermont, and he were to come over, he could speak. If he did not, certainly I would have no objection to a unanimous consent request to set the amendment aside.

Mr. KENNEDY. Well, the Senator is entitled, as matter of right, to address the Senate. The Senator from Illinois has another amendment on which we can begin at this time, even while we are waiting for the Senator from Vermont to get here. The Senator can gain recognition and speak. We are hopeful of trying to accommodate the leadership on both sides. This was a bill that had a 16–1 approval rating. It is enormously important legislation, and Members can speak on it.

The manager would prefer that we deal with the amendments that are relevant. But any Member is entitled to address the Senate on any other measure.

Mrs. KASSEBAUM. I wonder if the Senator from Texas will yield a moment for a parliamentary inquiry?

Mr. GRAMM. I yield the floor temporarily.

Mrs. KASSEBAUM. What is the standing of Senator MOSELEY-BRAUN's amendment?

Mr. KENNEDY. That has been temporarily set aside. I know the Senator wanted to address that issue. I, of course, would like to resolve that issue as well.

Mr. GRAMM. Mr. President, if I might reclaim my time, I would have already spoken and left.

The PRESIDING OFFICER. The Senator is correct.

THE CRIME BILL CONFERENCE REPORT

Mr. GRAMM. Mr. President, I wanted to express my deep disappointment in the early descriptions of the conference report that was agreed to early this morning on the crime bill. I believe that when the American people have an opportunity to look at this agreement, they are going to share my disappointment.

There are a lot of issues that I could talk about, beginning with the President's support for executive branch policy that will bring racial quotas into the death penalty in America as part of an effort to put the crime bill together. But today I simply want to talk about three areas that I am very much concerned about, areas where I believe the conference committee has not reflected the will of the American people.

On the floor of the Senate, I offered a set of amendments to require 10 years in prison, without parole, for possessing a firearm during the commission of a violent crime or a drug felony; 20 years without parole, in prison every day, for discharging a firearm during the commitment of a violent crime or a drug felony; life imprisonment, without parole, for killing somebody; and the death penalty in aggravated cases.

A version of that amendment was adopted overwhelmingly by the U.S. Senate, as it has been adopted overwhelmingly for a number of years.

When we went to conference with the House of Representatives, that amendment has reportedly been dropped.

Therefore, it is not part of the crime bill.

For several years I have offered an amendment requiring 10 years in prison without parole for an adult who uses a child in the commission of a drug felony or who sells drugs to a minor. I believe that the American people overwhelmingly support that provision. But in the conference meeting last night, I am told that that provision, which has been adopted by overwhelming votes on many occasions in the U.S. Senate, was again dropped. Therefore, it will not be in the crime bill.

But perhaps the thing that I am most unhappy about is the report of the action that was taken with regard to mandatory minimum sentencing. I have been alarmed from the first day of the Clinton administration by the difference between the President's rhetoric on crime and the action of his own Justice Department. The President in his very first speech to a joint session of Congress talked about getting tough on criminals. Yet the Attorney General and the Justice Department have spent every day they have been in office trying to overturn mandatory minimum sentencing for drug felons.

In an effort to try to compromise, in an effort to work in the best spirit of bipartisanship, as I am sure my colleagues who were leading the debate when we debated the crime bill would attest, I agreed to a compromise that said, in essence, those convicted of a drug felony who have no criminal record, and if the drug felony did not involve a minor, if they were not carrying a gun, if they were not a leader of the drug conspiracy, and if no one was injured in the crime, that the judge can take that into account in giving them a reduced sentence.

Mr. President, that was not an easy compromise for me to make because when someone is selling drugs to a child, this is a violent crime, in my opinion. But in the best spirit of bipartisanship, I helped work out that agreement, an agreement that would have covered, interestingly enough, only about 100 people a year.

Now, the conference committee has reportedly agreed to a provision that will allow people with previous drug convictions to be let out of jail and that according to some estimates retroactively could affect 10,000 convicted drug felons who are in prison today. They could be released by a bill that we call an anticrime bill.

I cannot understand, Mr. President, how we can be talking about getting tough on criminals and yet think of passing a bill which apparently has now been approved by the conference committee and will come back to the Senate with a provision that will retroactively go back and release drug felons who are in prison today under mandatory minimum sentences. Many of them are in prison because they were helping to sell drugs to children, and yet they will be let out of prison by a successful effort now by this administration to overturn mandatory minimum sentencing for drug felons.

When the President is standing up and saying let us get tough on criminals, when the President is saying three strikes and you are out, how many people knew the President was saying let us go back and change the law and allow thousands of drug felons who are in prison today out of prison because this administration believes that we were too tough on them by putting them in prison to begin with?

I do not believe that that provision reflects the will of the American people.

So, Mr. President, let me tell you what I intend to do on this one issue.

First of all, I am going to offer these provisions on every bill that I can for the remainder of this Senate. On those bills, I am going to offer these three provisions: 10 years in prison without parole for possessing a firearm during the commission of a violent crime or a drug felony; 20 years for discharging it; life imprisonment for killing someone; the death penalty in aggravated cases. That is one amendment. Another one will require 10 years in prison without parole for selling drugs to a minor or using a minor in a drug conspiracy.

Finally, I am going to do my best on each and every bill to overturn the administration's successful effort to let possibly thousands of drug felons who are in prison today out of prison.

I do not believe that that in any way reflects the will of the American people, and I think it is greatly at variance with the President's own rhetoric on this subject.

So I intend, at this point, to oppose the crime bill which, although it has some good provisions, while it has provisions that I have written and provisions that I have supported, I cannot support a crime bill that is going to overturn mandatory minimum sentencing for drug felons and which may potentially allow according to some estimates as many as 10,000 drug felons who are in the Federal penitentiary back out on the streets because the administration believes that we were too tough on them.

I also intend to see that we have an opportunity to vote on these amendments again and again until ultimately they are the law of the land.

HEALTH CARE

Mr. GRAMM. Mr. President, to accommodate my colleagues, let me just say a couple things about health care and about this bus tour.

I think it is very revealing that now consistently everywhere this bus tour goes in support of a phantom bill, which has yet to be written, there are over twice as many people turning out who oppose the President's plan as people who are turning out to support the President's plan.

That was reflected yesterday in a poll carried by AP where now only 33 percent of the American people support the President's health care plan.

I do not recall, Mr. President, in my 15 years in public life, of a single circumstance where a major legislative proposal which at one time had the support of as many as 70 percent of the American people has in 1½ years seen that support decline to only 33 percent.

I submit that it has not declined because the President does not have a big megaphone with which to sell it. I submit that support has not collapsed because the President is not a great salesman or because the First Lady is not a great saleslady. I submit that support has collapsed because the American people are not willing to tear down the greatest health care system in the history of the world and reinvent it in the image of the Post Office.

We can adopt a health care bill in the Senate and the House and make it the law of the land, but we cannot do it until the President gives up on the idea that we are going to have a health care program that is run by the Government. That is an absolute nonstarter.

When my mama gets sick, I want her to talk to a doctor. I want her to talk to a doctor of her own choosing. I want her to have a say in her health care, and I do not want her to have to talk to and get permission from some Government bureaucrat in order to get health care. On that issue there is not going to be any compromise.

(Disturbance in the visitors galleries.)

The PRESIDING OFFICER. The gallery will come to order. The Senate will please suspend until the Sergeant at Arms has restored order.

The Chair would request that the public in the gallery please maintain silence so the Senate can continue with its proceedings.

Mr. GRAMM. Mr. President, I know that a decision has been made to extend the health care debate into the recess period, and I am sure there are those who believe that there will be Members of the Senate who, with a recess pending, will say: "I've got all these plans, and I would like to save the greatest health care system in history. I am opposed to socialized medicine. But I promised my wife and my children that I would go on vacation."

So, therefore, given the choice, the American health care system is going to have to suffer.

But I want to assure my colleagues that I for one have canceled my vacation. I am willing to be here to debate this issue. There will be no unanimous-consent agreement limiting debate on the health care bill. The full rights of every Member will be preserved. We are

going to have a full and extensive debate.

I have to believe, Mr. President, that when we have so many Cabinet members and agency heads out driving around the country on these buses to support a bill that has yet to be written, when nobody knows what is in it, we have moved from a debate about a health care plan to a debate about a political agenda.

I know the President believes that he has to get a health care plan passed. But Congress does not have to pass just any health care plan.

I personally doubt that we are going to pass a health care bill under the current circumstances before the Congress adjourns for the August recess. I believe we need time to know what is in the bill that we are debating. And to paraphrase the chairman of the Appropriations Committee from his speech yesterday, we need to look at this bill closely; when we are building a new house, we need to be sure that the plans reflect the resources available and that the builder be prepared to adapt his master plan to changing circumstances.

So anybody who thinks they are going to force a health care bill through this Senate by holding us through the August recess had better rethink it, because that plan is not going to succeed if I can do anything about it.

I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

IMPROVING AMERICA'S SCHOOLS ACT OF 1994

The Senate continued with the consideration of the bill.

Mr. KENNEDY. Mr. President, we have set aside the Simon amendment for the longer school year. We have also the Gorton amendment and the gender equity amendment.

The Senator from Illinois has a further amendment on the Women's Equity and Education Act. I hope we would address that and then go to the Cochran amendment on the formula, which I think will be a major area of discussion and debate, since there are three or four different formulations of it. That is enormously important, obviously, to the States.

And then during that period of time, we will see how we can address some of these other items. We are preserving everyone's rights, obviously. In terms of making the greatest progress on the bill, we have talked to the Senator from Mississippi and others that have formula amendments and they are prepared to go. I think that that is something which is extremely important in terms of the legislation. So we will try and move in that direct direction.

Hopefully, we can dispose of this other Simon amendment and then move towards the formula amendment.

The PRESIDING OFFICER. The Chair would advise the Senator that the Senate has not formally set aside the amendment of the Senator from Illinois.

Mr. KENNEDY. Mr. President, I ask unanimous consent that we temporarily set aside the previous Simon amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Illinois.

AMENDMENT NO. 2424

(Purpose: To increase the authorization of the Women's Educational Equity Program to $5 million)

Mr. SIMON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. SIMON] for himself, Mr. HATCH, Mr. KENNEDY, Mr. PELL, Mr. HARKIN, Ms. MIKULSKI, Ms. MOSELEY-BRAUN, Mr. CAMPBELL, Mr. BINGAMAN, Mr. LEAHY, Mr. METZENBAUM, and Mrs. BOXER proposes an amendment numbered 2424.

Mr. SIMON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

On page 995, line 10, strike "$2,000,000" and insert "$5 million".

Mr. SIMON. Mr. President, what this amendment does, frankly, is it increases the authorization for the Women's Educational Equity Program from $2 to $5 million. That is still $4 million below where we were before. The Appropriations Committee in the Senate has already approved $3.9 million.

I offer this amendment in behalf of Senator HATCH and myself, and a number of Members of this body. It is very clear that we face an educational equity problem in this country as regards the female population in terms of students, in terms of administration, and in other areas. The program is doing solid work for a very, very small amount of money. I hope the Senate could accept the authorization.

The PRESIDING OFFICER. Is there further debate?

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I would like to speak for a moment to the amendment of the Senator from Illinois. We have discussed this in both the committee and here on the floor.

While this amendment is only a modest increase in the authorization for the Women's Equity and Education Act from, if I am correct, $2 to $5 million in authorization, I would have to speak against the amendment, although I am not going to request a vote, because I question whether this is an area in which we should be spending any Federal dollars at all.

If I could just for a moment, Mr. President, say that while what is called the WEEA Program, the Women's Equity and Education Act, targets a perceived problem in education—gender bias in our schools—as a woman, I can attest to the fact that I did not really feel that I was disadvantaged in schools because I was a woman. And I went all through public schools in Topeka, KS.

There are areas, certainly, where there is discrimination. But I am not sure that we can address it here with another additional amount of money in a Federal initiative.

I think the presumption that girls are "shortchanged" in school is supported only by a small body of research which has questionable findings.

For example, a study by the American Association of University Women found that girls receive less attention from teachers than do boys in the classroom, often resulting in lower self-esteem on the part of girls. What the study did not mention was that this perceived attention resulted from the fact that the boys received 8 to 10 times as many reprimands in the class as the girls. It was not positive attention.

So, I am not sure, Mr. President, that these things do not get balanced out and, in fact, by perhaps making too much of something, we only create a problem where perhaps it did not exist before.

With regard to academic achievement, boys typically score higher in math and science than girls, that is true, but girls get higher scores in reading and writing. Moreover, more girls go on to college and more receive master's degrees than their male counterparts.

So I am just not sure that this actually holds up when we look at the whole picture. I know this is a popular issue with many of my colleagues and it is a difficult one to vote against in a program that claims to level the playing field for women and for girls in school. However, I do believe that we have no right to play on this particular field in the first place. It should be in our own local school districts and in our school boards, where we should be engaged in trying to correct any uneven playing fields.

For that reason, I have great reservations. I will not ask for a vote, Mr. President, but I think it is important to note that we get into these issues and get into increasing funds for the best of intentions when actually I think we would be far better off leaving well enough alone.

I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I support this proposition. I think it is justified and worthwhile.

In the mid-1970's, a number of us tried to get the National Science Foundation to develop outreach programs to enhance women's achievement in math, science, chemistry, biology, and physics.

If you look over those individuals, for example, that were getting grants from the National Science Foundation, really probably less than 10 percent involved women in many of the technical sciences. I think what basically we were saying was that this country was losing an enormous asset, in terms of the ability and the interest and the commitment of a major segment of our society.

This particular program is an extremely modest program. The appropriation is already up to $4 million. This would just barely cover the appropriation.

What it is basically trying to do is enhance women's achievement in the classroom. It is basically targeted in terms of enriching the teacher's sensitivity, awareness, techniques and approaches in terms of bringing out the best in terms of women in the classroom.

The resources which have been used to date have demonstrated to be successful. It is an extremely modest program. I know there are those concerned about it. I appreciate the position that has been taken here by our friend, the Senator from Kansas, but I hope that the amendment would be agreed to.

Mr. GREGG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I would like to rise associating myself with the comments of the ranking member, Senator KASSEBAUM of Kansas.

My concern here is that we have already seen with this bill a number of Members come to the floor and add a few million here and a few million there. As Everett Dirksen said, that begins to become real money fairly quickly.

The problem is that in this bill there is a huge amount of new programmatic activity which we do not have the money to pay for. There is also a large number of programs which remain in this bill which the President himself suggested should be eliminated.

So the allocation of funds within this bill to the core activities which are needed to be done in this bill—which might be able to be increased, for example, if we did not have all these new programs—is constantly being chipped away instead by all these additional ideas that come to the floor.

Now I am sure many of these ideas are very worthwhile. In fact, I like many of these ideas.

But, the fact is we do not have a bottomless pocket here. We are having to make choices and make priorities, and to have Members continually coming down here and suggesting let us put another couple of million here and let us put another $10 million here, as already has happened a couple of times in this bill, is, in my opinion, fiscally irresponsible.

I will be offering an amendment later in the day, hopefully, when I have the opportunity and in the proper order, to eliminate all the new programs that have been added to this bill so we can get back to the basic core function which this piece of legislation is directed at, which is a very appropriate function and which is a very important function.

Chapter 1 dollars have played a major role in helping disadvantaged children get better prepared for and participate in school systems. But all these additional programs that are being put on here, many of them being wonderfully conceived ideas, simply are draining our ability to do the basic core programs. And we are not doing our job as a Senate of prioritizing what we can spend money on in a time of tight fiscal atmosphere.

We are running, as everyone knows, a fairly significant deficit in this country. So every time we come up with a new idea which is a good idea and say, let us spend some money on it, we have to borrow that money from the American people and from the children of the next generation.

I do not think it is fair to the children we are allegedly trying to assist to educate that we should load more debt onto their backs in order to constantly add new programs, many of which are so small, so minuscule they really cannot have a major impact across the Nation and really are issues, as the Senator from Kansas appropriately pointed out, more appropriately reserved to the decision process and the allocation of resources process at the local school board level.

So I do not support this amendment. I understand there is not going to be a vote on it. I will not ask for a vote on it. But I do want to raise the flag here, that we are setting off on another instance of: Let us add another new program, let us add a few dollars to this program, let us increase that program, when in fact we are not doing our job to underwrite the basic programs of education in this country which we already have on the books.

I point to one startling program as an example of that which is 94–142, which is grossly underfunded and which, as a result, is skewing the resources at the local community level.

So I hope we will not support this program, although I guess it is going to be accepted by the leadership. But when we get to my amendment, which raises this whole issue in a very definitive way—do we want to add $770 million worth of new programs to this bill—that Members will be sensitive to the fact that every time they add a new program it puts a drain on the capacity to do the other activities of this bill in an effective way.

So that amendment is coming. I just want to put people on notice of it. I yield the remainder of my time.

The PRESIDING OFFICER. The Chair recognizes the Senator from Illinois.

Mr. SIMON. Mr. President, I ask unanimous consent Senator MURRAY be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMON. Mr. President, I simply point out Senator KASSEBAUM said most of these decisions are made at the local level, and she is absolutely correct in that. But, for example, history books—only 2 percent of those who are featured in history books are women. You cannot correct that through the local school board. You need to correct that at the national level.

There are small things like that that really become significant in the long run. I hope my colleagues will vote for this.

Mr. BIDEN. Mr. President, 7 years ago, I suggested that American school children needed to spend more time in school—an additional 30 to 40 days each year. The reason is simple: America will not be able to compete in the global economy, much less thrive in it, if we give our children vastly less education than our competitors give theirs.

And, make no mistake about it: our children spend far less time in school than the children of other nations. On average, American children attend school 180 days each year. Meanwhile, other nations—America's economic competitors—send their children to school much longer. In Japan, it is 243 days; in Germany, up to 220 days; and in Hong Kong, 195 days.

This much we have known for years. But now we learn that it is not just a matter of days. In early May, the National Commission on Time and Learning, which was created by Congress in 1991, reported that in the four high school years, students in Japan, France, and Germany spend more than twice as many hours in core academic subjects—subjects such as math and science—as students in the United States. The Commission concluded that America's school children are—as the title of the Commission's report so aptly describes it—"Prisoners of Time."

As I see it, if we are to provide the future generations of Americans with the ability to compete in the global economy of the 21st century—a competition based not on brawn but on brains—our choices are few.

We can have inherently smarter students—students who can learn in 180

days what it takes the rest of the world over 200 days to learn—which we do not have.

We can have significantly more accomplished teachers—which is difficult to achieve.

Or, we can do what will inevitably be unpopular with students as well as teachers and probably some parents—but is inevitable if we are to solve the problem. And that is: send our children to school longer.

That is why the National Commission on Time and Learning in its May report recommended what I have argued for the last 7 years: America's children need to spend more time in the classroom learning.

Today, the Senate has the opportunity to put the Federal Government on record in support of a longer school year. The Simon amendment would authorize $100 million in grants to local schools that choose to extend the school year to at least 210 days—30 days longer than the current average year.

It is important to emphasize that this amendment does not require schools to adopt a longer school year. Some have pointed out during this debate that the length of the school yer should be a local decision. And, I am willing to accept that argument. But, nothing in this amendment requires a longer school year. It merely will help those local schools that on their own choose to have a longer year.

Another argument that I often hear against a longer school year is that the issue is not quantity but quality. On one level, that argument is right. It is important for all students to have a quality education, regardless of the length of the school year. But, as economist Lester Thurow has noted, those who argue quality over quantity are trying to reform education not with what is easy to do—"work longer and harder"—but with what is hard to do—"work smarter."

Having children spend more time in the classroom is not the only answer to a better system of education in this country. And, this amendment itself goes only part way in addressing the issue of a longer school year. But, it is a start, and it will provide local schools with some financial help to lengthen the school year. I urge my colleagues to support the amendment.

THE PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 2424) was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote.

Mr. SIMON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, I understand we are close to being able to vote on the gender equity amendment. That is the amendment of the junior Senator from Illinois. I understand in just in a moment or two the Senator from Kansas will be here to speak to this issue. Then, hopefully, we can move ahead in a vote.

Basically, I hope the amendment of the Senator from Illinois is accepted. Some years ago we had an amendment from the Senator from New Jersey, Senator BRADLEY, and myself that provided information to parents about what happened to many of the young people who attended universities on scholarships and whether they graduated.

Some of our finest universities, with some of our best athletic programs, have an extraordinary record of achievement and accomplishment in graduating young men and women who had athletic scholarships, who had very good academic achievement and great success on the athletic fields, who went on to some very important opportunities in the future.

We had also some examples of situations where individuals or students were given scholarships and once their useful life on the athletic field had expired, these individuals were effectively drummed out of the universities. And we also provided information as well in terms of various crime statistics so parents and applicants would have a good idea as to the nature of crime, both on campus and off campus.

The amendment of the Senator from Illinois really builds upon what has been an accepted concept, and that is giving additional information to the public. Her amendment deals with gender equity in athletics. It requires institutions of higher education to disclose to prospective students, the public, and the Department of Education information related to the support for men's and women's sports, participation rates of men versus women in sports, the number of coaches, recruiting expenses, average coaching salaries for men and women. It discloses this to prospective students and also to the public—and a report to the Secretary of Education.

I know there will be some who feel this will be onerous on universities. The fact of the matter is the universities have to comply with equity in terms of women's athletic programs—certainly since the Grove City title IX, and also the Grove City Supreme Court case, which we overturned here in the Senate to make sure there was going to be compliance.

Effectively, all this does is make that information available. If they are not going to provide for this kind of equity, of course, that is a different situation. There are remedies to try to make sure they do. This really is to make it available. It assumes the colleges and universities are doing so, and all this amendment does is just make sure that information is out there and shared with the public so they would know.

I support the amendment of the Senator from Illinois. I see she is here on the floor. I am very appreciative of her accommodation in terms of offering her amendment and speaking to it. We have had a time interruption because of the recess—appropriately so—earlier in the afternoon. I think momentarily we are going to be prepared to dispose of that amendment.

The PRESIDING OFFICER. The Chair advises the pending amendment is the amendment offered by the senior Senator from Illinois regarding the longer school year.

Mr. KENNEDY. Mr. President, I ask that be temporarily set aside and we have before the Senate the amendment of the Senator from Illinois.

Mr. BUMPERS addressed the Chair.

AMENDMENT NO. 2422

The PRESIDING OFFICER. The pending amendment becomes the amendment offered by the junior Senator from Illinois.

Ms. MOSELEY-BRAUN. Mr. President, I spoke on this amendment earlier today and was detained in judiciary hearings until just a minute ago.

I just would like to applaud and congratulate the Senator from Massachusetts for his leadership in this area, for his strong support of the equity in athletics and disclosure amendment, and urge its favorable consideration by my colleagues.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mrs. KASSEBAUM. Mr. President, I rise in opposition to the amendment of Senator MOSELEY-BRAUN. I have enormous respect for the sincerity of the Senator from Illinois. I can fully appreciate what she is trying to address in this amendment.

If I may just speak for a few moments as to why I am concerned about this amendment. One, not only do I think it adds additional bureaucratic confusion and burdens on institutions of higher education, but if this is to be addressed, I think it should have been addressed in the higher education bill rather than elementary and secondary legislation.

I suggest also that it is duplicative of Federal laws that are already in existence.

The premise of the amendment is that fewer dollars are spent on female athletes and coaches of many institutions of higher education, if I understand correctly. Again, there is the recognition of gender discrimination and the premise that the Federal Government should do something about that.

If the charge is that there is discrimination in college athletic programs against women's sports, any civil rights claim is covered by title IX, which guards against sex discrimination in any Federal education program. The Office of Civil Rights of the U.S. Department of Education enforces title IX, and it can request any data without this amendment.

I suggest this amendment also duplicates similar, but less burdensome, requirements in the Higher Education Act Amendments of 1992 which require institutions that offer athletic scholarships to report similar information. However, this amendment expands this paperwork burden and extends it to any institution that participates in Federal student aid programs.

I just feel that, while with the best of intentions, it really adds an enormous burden of reporting requirements and, as far as students are concerned, I venture to say that for most students and institutions, an athletics program is only one of many factors to be considered in deciding which college to attend.

In addition, a student is free to request such information from the institution without this amendment. Perhaps the Senator from Illinois hopes by this to develop records which show institutionally that going back even earlier in the process in elementary and secondary education we build up a gender discrimination that is then perceived in higher education.

I am not going to ask for a vote on this amendment, Mr. President, but I am disappointed that we, again, continue to add burdens on our institutions of learning that I feel should not be added or imposed on our institutions of higher education or our elementary and secondary schools.

Ms. MOSELEY-BRAUN. Will the Senator yield for a question?

The PRESIDING OFFICER. The Senator from Kansas has yielded the floor.

Ms. MOSELEY-BRAUN. Mr. President, I have the highest regard and respect for the commitment of the Senator from Kansas as well. I ask the Senator from Kansas, is she not aware that the Higher Education Amendments of 1992 do not cover Division III schools or Ivy League schools, and this amendment, of course, would be a level playing field, it would be across the board and, again, where there are omissions in other previous acts.

Mrs. KASSEBAUM. Yes, Mr. President, I do acknowledge that is the case, that this would require reporting from all institutions. And as I say, I am not going to ask for a vote, but I do, again, question the burdensome requirements that it will impose.

I yield the floor, Mr. President.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Washington.

Mr. GORTON. Mr. President, I wish to address the Senator from Illinois and simply ask her a question about the amendment.

I have read through it. I tend to agree with my colleague from Kansas that this is a lot more reporting and paperwork. Assuming we are going to have the paperwork, I would like the Senator from Illinois to explain to me why one of the statistics that is to be included every year is not the income which the institution receives from each of these various sports.

That may not be the only consideration as to how money is distributed, but it certainly is at least relevant to that. And I strongly suggest, I would be much more favorably disposed toward the amendment if one of the things in the report, so students could make an appropriate comparison, was how much money actually comes into the institution, which is paying out all this money, from each of these sports which is otherwise required to be reported?

Ms. MOSELEY-BRAUN. Mr. President, I thank my colleague from Washington very much. It is almost ironic that he would ask that question. I was just asked that very question by a minister who is visiting from my home State. We were talking about it, and he said, "Is there a difference between how much the boys teams bring in versus the girls teams?" He was kind of joking about it. I responded by saying the girls teams can make as much money as the boys teams do if they are given a chance.

The Senator is correct. The amount of money that the teams make is not included as reporting, the notion being that we have not yet gotten to the point where income disparities in terms of earning potential of the various team sports was at issue. Our concern was in terms of equality of opportunity to participate, not equality of opportunity to earn money from it participation in team sports.

The Senator's point is well taken. There may well be differentials in the amount that is earned by the boys teams versus the girls teams. But I think in the first instance we have an obligation to eliminate gender bias in terms of opportunities for students to participate.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, the Senator certainly understands this Senator would suggest that the amendment would be considered to be more fair and more all encompassing if the Senator from Illinois would modify it to include those figures. It certainly cannot hurt potential students or anyone else reading these figures to have a full understanding of the way athletic departments are funded.

This was meant to be a friendly suggestion. One would think it would improve the amendment to ask for the inclusion of those figures.

The PRESIDING OFFICER. Who seeks recognition? The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the Senator may be persuaded in that position. I personally do not find it enormously convincing. The whole point, in terms of the history of women in sports, is that they have been seriously shortchanged over a long period of time. We have had great difficulty in seeing that there was going to be some attention that was going to be given to women in sports.

I have no objection to having that kind of inclusion, but it just seems to me that the amendment is driving at another factor. We can grant and acknowledge that sports, particularly football; basketball, particularly in the big 10; and others, are the great moneymakers in terms of colleges and universities and in terms of professional sports. If that is the issue, we stipulate that.

The real question is, are we as a society going to, over a period of time in addressing many of the issues of gender inequity, really see, as a result of information that effectively is required under existing law, that it is going to be made available to the public?

I inform the Senator from Illinois, perhaps we could accept the amendment and then the Senator from Illinois and the Senator from Washington can talk additionally about whether they would agree, whether they would desire to have it perfected and we can address that at another time.

Ms. MOSELEY-BRAUN. Will the Senator from Massachusetts yield? Mr. President, I say to the Senator from Washington, I actually took his friendly suggestion. It is my understanding, and correct me if I am wrong, that if a friendly modification such as that means that the Senator from Washington would be prepared to support the amendment, if so modified—and he is nodding his assent—in that regard, I sent my staff over to work with the Senator's staff on language. Again, I would like to have the amendment accepted as quickly as we can agree on the modification as proposed.

Mr. GORTON. I thank the Senator from Illinois.

Mr. KENNEDY. Then what we will do is temporarily set that amendment aside, along with the others.

The PRESIDING OFFICER. Without objection, the amendment offered by the Senator from Illinois [Ms. MOSELEY-BRAUN], is set aside.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER (Mr. CAMPBELL). The Senator from Massachusetts, [Mr. KENNEDY], is recognized.

Mr. KENNEDY. Mr. President, I see the Senators from Mississippi and Arkansas here. I hope we can get about the debate now on the formulas. It is 4 o'clock. I appreciate the desire of our colleagues to address the Senate on different matters. This is a very important bill, and I am glad to and will stay here during the course of the evening, until we come to grips with this.

I asked the Members to come down last evening. We have so asked them this morning. We have asked them earlier in the afternoon. I hope we can

deal with the formula, which is a very legitimate issue and question and move forward with the debate on that item. It is important.

I know there are members who do have amendments. We are going to ask them to come on down. We are going to move on through. It is 4 o'clock. Unless they are going to come down, we are going to ask for third reading on this measure. We have tried to accommodate Senators. The majority leader has. And if we are not going to find Members here, I am going to ask the majority leader if we cannot move ahead. We have tried to accommodate Members. We have remained on the floor. We would like to address what are the central issues on an item of enormous importance to the young people in this country.

Mr. GORTON. Will the Senator from Massachusetts yield?

Mr. KENNEDY. Yes, I would be glad to yield.

Mr. GORTON. I believe that he, or his representatives and I and the Senator from Vermont have now agreed on a procedure to deal with what is the order, the amendment which I introduced this morning, and I think at least tentatively from the perspective of the Senator from Vermont and myself, we could quite soon agree to a time arrangement under which we voted successively on the two amendments at, say, 6 o'clock. I think that is time to get everyone here who wants to speak on those amendments. And so if he can clear that on his side, I think I can clear that from the perspective of my own amendment. We could be on something of substance. We could get it done. We could have those votes and go on to something else. I am working on a minor amendment to the amendment of the Senator from Illinois. As soon as that is worked out, we could take that up and pass it in about 30 seconds.

Mr. KENNEDY. Let me say the Senator from Washington has been extremely patient and willing to work with the Members here. We will inquire of the interested Senators on this issue. I hope that we could do that prior to the hour of 6. We will certainly talk with the Senator and do it in a way in which Senator HARKIN and others would want to do it. But I would like to try, if we are able to move that in a timely way, to do so. But we will certainly work out that time with the Senator.

Mr. GORTON. We are ready to go. We are ready to proceed.

Mr. KENNEDY. The Senator is ready to go now.

Mr. GORTON. Yes.

Mr. KENNEDY. As I understand from staff, the other interested parties are prepared to go as well.

The PRESIDING OFFICER. Who seeks recognition?

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas, [Mr. BUMPERS], is recognized.

Mr. BUMPERS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. Without objection, the amendment——

Mr. JEFFORDS. Mr. President, what is the pending business?

Mr. BUMPERS. I send an amendment to the desk on behalf of myself——

The PRESIDING OFFICER. If the Senator will withhold for a moment, the pending business is amendment No. 2423.

Mr. BUMPERS. Mr. President, I ask unanimous consent the pending amendment be temporarily set aside so that I may offer an amendment.

Mr. JEFFORDS. Reserving the right to object, if I may inquire, the pending amendment, I believe, is the Gorton amendment?

The PRESIDING OFFICER. The Simon amendment.

Mr. JEFFORDS. The Simon amendment. May I inquire—reserving my right to object—of the Senator from Arkansas as to the length of time his amendment will take and whether this is something that can be accepted or whether it is going to require considerable debate?

Mr. BUMPERS. Mr. President, I cannot be very definite about this. It is a very important amendment. And my guess is it is going to take a while.

Mr. JEFFORDS. It is my understanding it is a formula amendment.

Mr. BUMPERS. Yes, it is a chapter 1 formula change.

Mr. GORTON. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I hope that we might accommodate Senators. We have been trying to get—this formula issue is going to have to be debated. It has reached sort of the heart and soul—we do not want to disadvantage any Members, but we are in the process of notifying other Senators who were interested in other issues, and I would hope that we could move ahead on it. As soon as we are able to contact others, we will try and at least see if we cannot resolve those items which are pending.

Mr. JEFFORDS addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Still reserving the right to object, we now have Senator HARKIN coming on the Gorton amendment. The amendment has been set aside. The Senator from Washington is ready to go. We are ready to agree on a unanimous-consent and get it out of the way so we can clear it and then spend the rest of the time probably on the formula amendments.

So I would urge that we be allowed to get back to the Gorton amendment and resolve that and then proceed on to the formula. We have two formula advocates here, and it would seem to me it would be more logical to bring it in that kind of order.

Mr. KENNEDY. Mr. President, I appreciate the Senator's comments. I see the Senators from Arkansas and Mississippi in the Chamber. We have been trying to urge them to come over here for some period of time. And now, as they are experienced legislators and familiar with the way this process works, we are going to then move ahead and vote on the Gorton amendment and the Harkin amendment, as I understand it.

Mr. GORTON. Mr. President, will the Senator yield?

Mr. KENNEDY. Yes.

Mr. GORTON. Mr. President, we are certainly prepared to debate, and we are certainly prepared to enter into time agreement on it. In order not to waste any time, I am prepared and really prefer that the manager simply call for the regular order and bring up our amendment. The agreement is this: That the Gorton amendment will be debated and dealt with at the same time the Senator from Vermont is going to explain his alternative amendment to it. We will try to get one time agreement on both of them and vote on them respectively.

Mr. KENNEDY. Mr. President, if I could suggest a way of proceeding, that the Senator from Arkansas withhold offering the amendment, and we could start the debate on it. That preserves the position of the Senator from Washington. We are all interested parties. We will try to resolve this. I think that will be the best utilization of the Senate's time. Otherwise, we are going to be in a period of quorum calls.

I think there is really not much of a mystery about the basic concept. I know the Senator will want to address the substance of it. But if we could proceed in that way, I think it would save us a good deal of time this evening.

Mr. BUMPERS. Will the Senator yield for a question? Is the Senator from Washington prepared to offer and debate his amendment?

Mr. GORTON. The amendment of the Senator from Washington is the regular order. The Senator from Washington is prepared to make a brief additional statement to the one that he made this morning. I will let the Senator from Vermont speak on the other side. We have notified the other proponents, and I understand the Senator from Iowa [Mr. HARKIN], is on the same side as the Senator from Vermont. He is on his way to the floor. I would just as soon start on the Gorton amendment, and the companion Jeffords amendment, and finish this as quickly as we can.

The answer is I am prepared to start that now.

Mr. BUMPERS. Mr. President, let me say to the Senator from Massachusetts

that I want to be helpful. I know how frustrating it can be in the chair he is sitting in and waiting for action. Now he perhaps has more action than he wants. I am reluctant to serve our amendment by beginning the debate and going to these others and coming back to it. I think the Senator can understand.

Mr. KENNEDY. All right. I would suggest we start the debate and conclude the debate on the amendment of the Senator from Washington.

I would ask that the interested Senators on this issue come to the floor because when the Senator from Washington concludes, we are going to move ahead on this in terms of having the votes on it. So those Members who are interested, we are urging them to come to the floor. We have tried to accommodate on this issue since early this morning. I think we have as I understand a way of proceeding. I would hope that we would accommodate and listen to the Senator from Washington—those who have differing views, which I personally do. But I know there are other Members. Then I hope we are going to resolve this issue so that we can move ahead.

Mr. BUMPERS. Mr. President, I wonder if the Senator from Massachusetts would yield. Will the Senator be willing to entertain a unanimous-consent agreement so we do not have a hiatus and move expeditiously, as he suggested, with the unanimous-consent agreement that the regular order be following disposition of the Gorton amendment and the Bumpers amendments? I promise that I will be here and ready.

Mr. JEFFORDS. If I can, just to get on this process, I ask unanimous consent that we proceed immediately to the Gorton amendment, and that after some time to be agreed upon, we vote on the Gorton amendment; immediately after the Gorton amendment, an amendment to be offered by myself, Senator JEFFORDS, would be in order for debate and the time to be limited and to be voted on notwithstanding whatever the result is on the Gorton amendment.

Ms. MOSELEY-BRAUN. Mr. President, will the Senator yield? I lodge an objection to that request. The amendment on equity in athletics is still pending. We can agree on a modification. If we can have that adopted by a voice vote and then go to the Gorton amendment, as stated in the unanimous consent request, I would be prepared to withdraw my objection.

Mr. JEFFORDS. I have no objection to that being part of my unanimous consent; that immediately prior to going to the Gorton amendment, we take care of the amendment of the Senator from Illinois.

Mr. KENNEDY. Mr. President, we are going to go back. We are trying to accommodate the Members. Now I am going to ask for the regular order, and we are going to follow the rules of the Senate. We have attempted to accommodate different people on different times in different ways. The Members are entitled to know that we are going to proceed by the Senate rules.

I am very grateful to all of those who have tried to be helpful. But we have now different matters that are before the Senate. We have the Senate rules, and we are going to follow those particular rules, and dispose of those amendments in an orderly way. We will do the best we can and stay here as long as we can. I am grateful. This in no way reflects in terms of others who have tried to accommodate. But we just have too many Members who have interests, and in order to preserve all of their rights, we are going to follow the Senate rules.

Mr. President, what is the regular order?

The PRESIDING OFFICER. Regular order is the Gorton amendment.

Mr. KENNEDY. Regular order is the Gorton amendment.

The PRESIDING OFFICER. That is correct.

Mr. KENNEDY. Then we will proceed.

The PRESIDING OFFICER. That is now the question before the body.

Mr. GORTON. Mr. President, the Senator from Illinois has been most generous to me, and as I understand it, all she needs to do is modify her amendment. I do not believe there is any more debate, and we can pass it in 30 seconds. I do not want to keep her here 2 hours for that.

I ask unanimous consent that we allow the Senator from Illinois to modify her amendment and bring it to a voice vote, with the understanding that it requires no further debate, and it will be agreed to. We can have it done in 30 seconds.

Ms. MOSELEY-BRAUN. I thank the Senator from Washington and the Senator from Massachusetts.

AMENDMENT NO. 2422, AS MODIFIED

Ms. MOSELEY-BRAUN. Mr. President, I send the modification to the desk.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment (No. 2422), as modified, is as follows:

On page 1357, after line 25, insert the following:

SEC. ___. HIGHER EDUCATION ACT OF 1965.

(a) SHORT TITLE.—This section may be cited as the "Equity in Athletics Disclosure Act".

(b) FINDINGS.—The Congress finds that—

(1) participation in athletic pursuits plays an important role in teaching young Americans how to work on teams, handle challenges and overcome obstacles;

(2) participation in athletic pursuits plays an important role in keeping the minds and bodies of young Americans healthy and physically fit;

(3) there is increasing concern among citizens, educators, and public officials regarding the athletic opportunities for young men and women at institutions of higher education;

(4) a recent study by the National Collegiate Athletic Association found that in Division I–A institutions, only 20 percent of the average athletic department operations budget of $1,310,000 is spent on women's athletics; 15 percent of the average recruiting budget of $318,402 is spent on recruiting female athletes; the average scholarship expenses for men is $1,300,000 and $505,246 for women; and an average of 143 grants are awarded to male athletes and 59 to women athletes;

(5) female college athletes receive less than 18 percent of the athletics recruiting dollar and less than 24 percent of the athletics operating dollar;

(6) male college athletes receive approximately $179,000,000 more per year in athletic scholarship grants than female college athletes;

(7) prospective students and prospective student athletes should be aware of the commitments of an institution to providing equitable athletic opportunities for its men and women students; and

(8) knowledge of an institution's expenditures for women's and men's athletic programs would help prospective students and prospective student athletes make informed judgments about the commitments of a given institution of higher education to providing equitable athletic benefits to its men and women students.

(c) AMENDMENT.—Section 485 of the Higher Education Act of 1965 (20 U.S.C. 1092) is amended by adding at the end the following new subsection:

"(g) DISCLOSURE OF ATHLETIC PROGRAM PARTICIPATION RATES AND FINANCIAL SUPPORT DATA.—

"(1) DATA REQUIRED.—Each institution of higher education that participates in any program under this title, and has an intercollegiate athletic program, shall annually submit a report to the Secretary that contains the following information:

"(A) For each men's team, women's team, and any team that includes both male and female athletes, the following data:

"(i) The total number of participants and their gender.

"(ii) The total athletic scholarship expenditures.

"(iii) A figure that represents the total athletic scholarship expenditures divided by the total number of participants.

"(iv) The total number of contests for the team.

"(v) The per capita operating expenses for the team.

"(vi) The per capita recruiting expenses for the team.

"(vii) The per capita personnel expenses for the team.

"(viii) Whether the head coach is male or female and whether the head coach is full time or part time.

"(ix) The number of assistant coaches that are male and the number of assistant coaches that are female and whether each particular coach is full time or part time.

"(x) The number of graduate assistant coaches that are male and the number of graduate assistant coaches that are female.

"(xi) The number of volunteer assistant coaches that are male and the number of volunteer assistant coaches that are female.

"(xii) The ratio of participants to coaches.

"(xiii) The average annual institutional compensation of the head coaches of men's

sports teams, across all offered sports, and the average annual compensation of the head coaches of women's sports teams, across all offered sports.

"(xiv) The average annual institutional compensation of each of the assistant coaches of men's sports teams, across all offered sports, and the average annual compensation of the assistant coaches of women's sports teams, across all offered sports.

"(xv) The total annual revenue generated from attendance at athletic contests across all men's teams and women's teams.

"(B) A statement of the following data:

"(i) The ratio of male participants to female participants in the entire athletic program.

"(ii) The ratio of male athletic scholarship expenses to female athletic scholarship expenses in the entire athletic program.

"(2) DISCLOSURE TO PROSPECTIVE STUDENTS.—An institution of higher education described in paragraph (1) that offers admission to a potential student shall provide to such student, upon request, the information contained in the report submitted by such institution to the Secretary under paragraph (1), except that all such students shall be informed of their right to request such information.

"(3) DISCLOSURE TO THE PUBLIC.—An institution of higher education described in paragraph (1) shall make available to the public, upon request, the information contained in the report submitted by such institution to the Secretary under paragraph (1).

"(4) SECRETARY'S DUTY TO PUBLISH A REPORT OF THE DATA.—On or before July 1, 1995, and each July 1 thereafter, the Secretary, using the reports submitted under this subsection, shall compile, publish, and submit to the appropriate committees of the Congress, a report that includes the information contained in such reports identified by (A) the individual institutions, and (B) by the athletic conferences recognized by the National Collegiate Athletic Association and the National Association of Intercollegiate Athletics.

"(5) DEFINITION.—For the purposes of this subsection, the term 'operating expenses' means all nonscholarship expenditures.".

(d) EFFECTIVE DATE.—The amendment made by subsection (c) shall take effect on July 1, 1994.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois, as modified.

The amendment (No. 2422), as modified, was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Ms. MOSELEY-BRAUN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Washington [Mr. GORTON] is recognized.

Mr. GORTON. Mr. President, at 10:30, probably 10:30 this morning, I laid down the Gorton-Lieberman amendment on school violence. It was debated briefly at that time. It is obviously controversial.

I understand that the procedure that we will attempt to follow in this case, for the convenience of all Members, is that we will now discuss that amendment, and Senator JEFFORDS and others will discuss an alternative amendment on the same subject.

We hope that the unanimous consent agreement will be reached under which there may very well be a time agreement. But, in any event, the two amendments will be voted on in sequence. They relate to one another. There does not need to be additional time after the vote on my amendment before the vote on the Jeffords amendment. That obviously has not been completely worked out yet. But that is the goal of I believe the proponents of both amendments.

Mr. President, my amendment, simply to summarize briefly what I said this morning, is an amendment to restore a significant measure of control over seriously violent conduct in schools to local school district authority. Specifically, the amendment covers the weapons violations in schools, life-threatening acts, and activities in school on the part of students with those life-threatening activities, narrowly defined as it is defined in the sentencing guidelines.

These, of course, are forms of authority which the public schools of the United States have exercised from time immemorial until the U.S. Congress began to involve itself in individual school discipline.

There are two parts to the amendment. One is a general statement of the delegation of authority over offenses of this sort to the schools. The second is the amendment to the Individuals With Disabilities Education Act of 1975, which amends that act so that the same rules, with some restrictions, apply to those who are disabled, pursuant to which they can be removed from the school situation for up to 90 days, as long as they are provided with an alternative opportunity for education by a particular school district.

Now, under IDEA, a student, no matter how violent, no matter how life-threatening his or her activities, no matter how offensive a weapons violation, cannot be removed from school for more than 10 days without the permission of the offender's parent, or a court order, which under Federal law, generally speaking, must come from a Federal court. This means, in practical terms, for our school authorities, that their disciplinary authority is almost negligible in this case.

We have myriad cases in which dangerous students are consistently and constantly returned to school after very, very short suspensions. We have many instances in which the parents, against whose children an offense was committed, feel they have to take their children out of schools because of the inability to provide for this type of incident. In some instances, teachers are resigning their positions because they can no longer control their classrooms.

This Senator—speaking on behalf of teachers, school administrators, parents and school directors, as a result of what I learned in January, very surprisingly, at an education summit—would very bluntly prefer to grant much more authority to local school districts. General disruption in the classroom ought to be the subject of discipline by local school authorities. It should not be interfered with by laws passed by the Congress of the United States.

But in order to narrow the focus on only the most dangerous activities, the amendment I have introduced, together with Senator LIEBERMAN and others, only applies to weapons violations, and narrowly defined life-threatening kinds of activities on the part of these students.

This Senator recognizes that for some reason or other, this is extraordinarily controversial. But for the life of me, I cannot understand why it should be so controversial. Only two reasons occur to this Senator. One is that this Congress simply does not trust teachers, school administrators, and members of school boards, to make even these most fundamental decisions about the way in which their own schools are operating. Secondly, the answer is that next year the Individuals With Disabilities Education Act is up for reauthorization, and we ought to defer a discussion of this subject until that time.

In response to the latter objection, this Senator has sunsetted the provision in his amendment to expire automatically when IDEA is, in fact, reauthorized. We know that the mere fact that it is up for reauthorization next year does not mean it will be reauthorized. It could be another 1, 2, or 3 years. We will discuss this subject now. I suspect this Senator will want a much broader delegation of authority to school districts then.

But, in any event, this amendment will be subsumed in whatever is passed in such a reauthorization. Until then, however, I do not believe that just because this law is holy writ, and with all of the problems our schools face, that they should have to wait another year, 2 years, or 3 years, for a degree of authority, which almost every rational person thinks they ought to have at the present time.

The choice—single or double—which the Senate will make, as a result of the informal agreement reached with the managers of the bill, is that Senator Jeffords will put forth an amendment which differs in two respects from my own. First, it will excise from my amendment any reference to life-threatening activities. In other words, the Jeffords amendment will not allow school districts to avoid all of the detailed provisions of IDEA in connection with life-threatening activities on the part of students.

I think that explanation of the difference should show Members how they ought to vote. Why in the world we should not allow school districts authorities greater than their very narrow authority right now, when life-threatening activities take place in their classrooms, I cannot figure out.

The other difference is that our amendment has sections applying to all students, delegating an even broader authority for those students who are not disabled. That section, as I understand it—I have not seen its final form yet—is not included in the Jeffords amendment. So Members will make a modest step forward if they were to pass only the Jeffords amendment. At least it does something with respect to weapons violations. It does nothing with respect to life-threatening situations in our schools.

But we will get to vote on both of these amendments. It is, I suppose, consistent to vote for both of them, or for neither, or to vote for one and not vote for the other. But the fundamental difference between the two is whether or not we think there should be some change in the bureaucratic, court-written system now of disciplining students who engage in life-threatening actions during the course of their time in schools.

Mr. President, this whole thing is getting more and more bizarre as we go on. In another connection, we have at least one report of a court case in which the disability claimed to protect the student is the fact that the student brought the gun to school. The student brings the gun to school, the school attempts to discipline him—and he is not a disabled student—and he claims that the mental condition that caused him to bring the gun to school is itself a disability, so he cannot be disciplined, or cannot be disciplined beyond the very narrow parameters of the present law.

This is just too much to take, Mr. President. It is time that we allow school district authorities a greater degree of discretion with respect to students who bring weapons to school or engage in life-threatening behavior with respect to other students or their teachers.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. KENNEDY. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. CRAIG. I am happy to yield.

The PRESIDING OFFICER. The Senator from Massachusetts.

TIME LIMITATION AGREEMENT

Mr. KENNEDY. Mr. President, I ask unanimous consent that Senator GORTON's amendment be laid aside, that Senator JEFFORDS then be recognized to offer a first-degree amendment on the same subject as Senator GORTON's amendment No. 2418; that there be 45 minutes under the control of Senator JEFFORDS and 30 minutes under the control of Senator GORTON, or his designee; that upon the use or yielding back of the time the Senate proceed to a vote on Senator GORTON's amendment to be followed by a vote on Senator JEFFORDS' amendment, and that the votes take place without any intervening action or debate, with no amendments in order to either amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. KENNEDY. Does the Senator want to ask for the yeas and nays?

Mr. GORTON. Are not the yeas and nays ordered?

Mr. KENNEDY. On the Jeffords amendment.

Mr. JEFFORDS. Mr. President, I ask for the yeas and nays on the Jeffords amendment.

Mr. GORTON. Mr. President, reserving the right to object, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GORTON. Senator CRAIG is now speaking on a somewhat different subject. Is this UC to begin upon the completion of Senator CRAIG's remarks?

Mr. KENNEDY. I ask unanimous consent that it be in order at the conclusion of Senator CRAIG's remarks.

Mr. GORTON. No objection.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. JEFFORDS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The Chair will inform the Senator that the regular order, a request for the yeas and nays, is not before the body.

Mr. KENNEDY. When the Senator does offer his remarks it will be in order to ask for the yeas and nays.

The PRESIDING OFFICER. It would be in order at that point.

Mr. KENNEDY. Could we ask unanimous consent that it be in order at this time?

The PRESIDING OFFICER. Is there objection?

Mr. JEFFORDS. I have not offered this amendment at this time. I will ask unanimous consent that I be allowed to offer the Jeffords amendment at this point.

Mr. CRAIG. Mr. President, I stand in support of the Gorton amendment this afternoon. Earlier, before we went into recess, I also spoke in favor of the Feinstein-Dorgan amendment relating to guns coming to the schools of America, and the willingness on the part of this Senate to say in a very straightforward way that that is just not acceptable.

The Gorton amendment says that it is not acceptable, that we do not recognize violence in the classroom, and that we do not give local school authorities the opportunity for appropriate discipline in the discouragement of that kind of activity.

So for a few moments this afternoon, I would like to interrelate a concern that I have, which I think is spoken to in the Gorton amendment, and is also addressed in the Feinstein amendment, which is that it is clearly time for our country and this Senate to speak directly to the responsibility of the individual and the need to allow local authorities to be able to discipline and to respond accordingly to the act of the individual, instead of to this rather general approach we have had over the years that somehow individuals were products of society, and that we had to be careful in how we handled them because they were simply disadvantaged in the nature in which they had been socially adjusted.

If they were misadjusted, somehow that was not the fault of the individual. It was the fault of society, and we must accordingly respond.

Mr. President, that is kind of part of the debate that is involved here this afternoon and why there are some Senators who would like to modify the Gorton amendment.

The Republican leader was on the floor just a few moments ago speaking to his frustration over a crime conference that struck from a crime bill some very strong efforts to react to and to control individuals in this society who have decided to be deviant from the laws and the norms of our society and somehow either go undisciplined or in some way almost rewarded for their deviate acts.

That is probably why we are debating education today and in the midst of that educational debate we are talking about guns. It is almost unique that we would be doing so. But the reason we are is because over 250,000 guns a day come to our public schools, and our local school officials' hands are nearly tied in their inability to act responsibly, directly, and quickly to that kind of an issue.

Something is wrong.

The Senator from Washington is attempting to respond to it. The Senator from California is attempting to respond to it. The Senator from the Dakotas is attempting to respond to it.

So for a few moments this afternoon I would like to react to it with a statement that I thought about for sometime in relation to an action that is underway by this administration as it relates to the control of criminal violence in our country, and while it does not seem to fit in the educational context, I think it does fit because it is most appropriate that we discuss it here this afternoon.

I think some of you may remember the summary that was featured in the article in U.S. News & World Report in April, and it also mentioned certainly a colleague of ours from the West, Congresswoman BARBARA VUCANOVICH of

Nevada on the House floor during the debate on the gun ban.

It is the product of an interagency working group on violence, appointed by this administration, a group composed of representatives from the Departments of Agriculture, Education, Health and Human Services, Housing and Urban Development, Justice, Labor, as well as the Domestic Policy Council and the Office on National Drug Policy.

Why should anyone take notice of this kind of activity? Why should I be discussing it this afternoon in context to this particular bill? Here is why, because I think that there are some important statements here that are very frustrating to me but are reflective of why we are here debating the issue as we debate it today.

Mr. President, I was discussing a report on violence that was produced by a group of individuals inside the Clinton administration, and I do believe it does fit the debate and the discussions that we are involved in today.

Now, the question is, why should we take notice of this particular report and why does it fit in the context of our debate today?

For one thing, some of the suggestions in the summary are already implemented and are working their way through the process of the executive branch or Congress. Others may still be under review. But, more important, these suggestions in the report that relate to violence in America tell us a lot about the mindset of this administration and the President's closest advisers and why somehow this Senate does not want to give to local school authorities the direct ability to discipline deviants or students who would choose to act against the well-being of fellow students.

I am particularly interested in the section of the summary of that report that deals with firearm violence. Before turning to what this section says, let me tell you about what it does not say.

What is completely missing from this section is any acknowledgement of firearm benefits.

Now, I am not talking about sports and hunting. Somehow today as people discuss firearms in America they only want to say that under the second amendment it is sports and hunting that is appropriate. Those may be benefits enjoyed by millions of Americans. But this report is supposed to be about violence and not recreation.

What I am talking about is the fact that guns save lives and prevent injuries, crime and violence in our country every day. This report completely ignores the fact that guns are used for self-defense at least as often and statistics will suggest substantially more than they are used in violent acts with a criminal purpose in mind.

Our Founding Fathers knew that firearms secured liberty. Millions of Americans since their time have understood that concept. Today, perhaps half of America's households own guns. We take our gun ownership for granted, just as we take for granted that our Government would never force us to give up our means of self-defense.

Now comes this report. Not only does it list a variety of schemes for regulating firearms, but it even gives strategies for reshaping the way people think about firearms in America. Those strategies include building a scientific basis for justifying gun control and exploiting human psychology to build antagonism toward guns. While we are dealing with education, there is nothing wrong with what this bill is attempting to do. It sets simply parameters of ownership in this case in light of juveniles and in all acts of the juveniles of America over time we said certain things were appropriate and certain things were not appropriate.

But what is interesting is that this administration is saying and this report clearly says that with the rest of America we need to talk about a paradigm shift to move the debate on guns away from philosophy and into a discussion of accident statistics.

In other words, Mr. President, this report urges the administration to forget that liberty is at stake and that there is another side to the gun debate and to this debate except violence.

This report does not suggest any research into the defense or the defensive use of firearms. It does not suggest methods for promoting gun ownership for purposes of marksmanship and responsible actions.

Instead, it portrays the gun as a menace to society. In the section entitled "Description Of The Problem," it refers to a "flood of guns," and an "epidemic of gun violence." And it suggests that the Federal Government ought to take such appropriate action to curb firearm injuries that it took with highway safety.

All of sudden it becomes this manageable thing out there, that if you simply write the right Federal laws it is as easy to manage as highway safety.

Aside from the constitutional problems that this argument obviously has—and they have obviously ignored it—there are the problems I just mentioned: Unlike motor vehicles, firearms actually play a role in preventing injuries and death, if properly used. There is also the problem that virtually all motor vehicle injuries are as a result of an accident—while only a tiny fraction of gun injuries are accidental.

But let me get in to the specifics of the report.

The report's recommendations include excise taxes on guns and ammunition—that has already been debated on the floor; it has been talked about, at least—licensing, registration, bans on manufacturing, and reducing the number of licensed firearms dealers.

Let me read a few excerpts from this report.

By the way, this is a report that was kept under lock and key. The press could not get their hands on it until just recently. Other individuals who tried to acquire it were told that it was not available. We finally demanded its presence in our office and it was brought to us.

Let me quote from the report.

To complement the above measures, effective firearm control should consider limiting production of certain new firearms and ammunition, especially the most dangerous weapons. In addition to bans on new production of assault weapons (as in Senator Feinstein's amendment to the Crime Bill), consideration should be given to placing higher taxes on handguns, which remain the weapon of choice among criminals, accounting for approximately 80% of all firearms homicides.

It is also possible that increased excise taxes on handguns and particularly dangerous ammunition would help offset the cost of providing medical care to gunshot victims and support state regulatory and enforcement efforts to prevent firearms injuries. If additional taxes are going to be imposed, consideration should be given to setting them at a cost per gun or bullet, rather than a percentage of manufacturers' prices, because cheap guns and expensive guns can do equal damage.

By themselves, restrictions on new manufacture and sales of various firearms will not reduce our huge existing arsenal of firearms, or keep those firearms away from criminals and those who may cause harm. State or local amnesty or buy-back programs may help reduce the arsenal as suggested by the recent experience with the Toys R Us swap program, as would elimination of the government practice of selling to civilians the firearms that are seized in crimes. New requirements that firearms purchasers be licensed and/or be mandated to register their firearms, combined with stricter enforcement of laws prohibiting sale of firearms to certain groups of people, could significantly reduce access to guns by those who should not have them. Increasing dealer liability for negligent sales would also help.

But that is not all. The working group has a lot more recommendations:

In addition to, or as an alternative to, a licensing scheme (where firearms purchasers might have to pass a gun safety test and a background check to receive a permit to buy any firearm or ammunition), the federal government should consider creating a class of "restricted weapons." This list would include all handguns and semi-automatic long guns that are not otherwise outlawed and could be purchased or carried only by persons holding valid registration certificates. These restricted weapon certificates could be issued by the local police or licensing authorities only after applicants had passed a background check for felonies, violent misdemeanors, mental illness, etc.; demonstrated a satisfactory knowledge of the safe and responsible use of firearms; accepted liability for injuries resulting from the negligent use or storage of these weapons; and showed that the firearm would be used only for specified legitimate purposes. Restricted weapons could be possessed only in one's home, one's place of business, on the premises of a target range (depending on the terms of the registration certificate), or while being transported to or from any of the

above. Possession of an unregistered, restricted firearm or unlawful public carrying of a restricted firearm would be a punishable federal offense. Developing this class of restricted firearms would thus divide firearms into three groups: banned, restricted, and unrestricted (i.e. long guns which are not semi-automatic).

Tighter restrictions on retail firearm sales must be supplemented by efforts to block the two streams by which criminals most often obtain their firearms—the illegal black market and theft. Such a regulatory scheme might look as follows: The federal government would regulate secondary transfers of all firearms to prevent their delivery to those prohibited by law to have weapons. To transfer a firearm, an unlicensed person would be required, along with the transferee, either to go to the premises of a licensed dealer and document the transfer in the dealer's records, or to mail a transfer application to the local police (including the name and residence of both the transferor and transferee). The transferee would be required to certify that he is not a prohibited purchaser (as he must now do in order to buy a firearm from a licensed dealer), and, in the case of a handgun, to wait five days for a background check. To control theft from licensed dealers, the federal law would require dealers to store their firearms securely. The regimen would involve stricter penalties for gun theft, as well.

To ensure dealer compliance, we suggest reducing the number of licensed firearm dealers (currently numbering almost 250,000) by implementing higher fees such as the Bureau of Alcohol, Tobacco, and Firearms has recommended (the Brady law mandates fees of $200 for a three year license, and the ATF is considering fees as high as $600 per year) and tighter application standards beyond what has been accomplished by the Brady law.

Also the federal government, as well as the states, should redouble efforts to monitor and regulate licensed dealers. Furthermore, we could consider adopting on a national basis the Virginia law prohibiting licensed dealers from selling more than one firearm per month to any single individual. The Brady law requires that dealers notify state or local law enforcement authorities of multiple sales of two or more pistols or revolvers in any five day period to an unlicensed person.

These schemes are offered in the name of making it harder for the wrong people to get guns. But Mr. President, there is nothing in any of these schemes that limits their effect to the wrong people. On the contrary, each and every one of these ideas would restrict the ability of the right people, or the law-abiding people, to obtain firearms for legitimate purposes—including the prevention of crime, injury or death.

In this country, we don't restrict the freedoms of everybody in order to prevent the crimes of a few. For instance, we do not require reporters to submit their writings to a Government board for approval before publication to prevent false reporting. That is called first amendment rights. We respect due process for everyone, even though some criminals may benefit from it. We do not require people to get Government clearance before they join associations, even though some associations might be formed for criminal purposes.

Those are basic freedoms protected by the Constitution, just as the right to bear arms.

The report does not stop there, Mr. President. It also suggests "reducing the lethality of firearms."

3. Reduce the lethality of firearms. The manufacture and importation of firearms that are inherently unsafe and excessively lethal continues in the United States. Federal law requires imported weapons to adhere to design and safety standards; however, current federal policies do not impose the same design and safety standards on domestically manufactured weapons and ammunition. Many handguns now manufactured in the United States for civilian use would fail these tests.

The recent approval of the Feinstein amendment to the Senate's Crime Bill, which would prohibit the new manufacture and sale of 19 specified assault weapon models and any copycat versions, together with the existing ban on production of certain armor-piercing ammunition, demonstrates a willingness to ban extremely dangerous firearms and ammunition. Both efforts have substantial public support. We should consider the further steps of adopting specific performance standards that would prohibit manufacture of firearms capable of firing more than a certain number of rounds or a certain number of bullets per second as well as ammunition that, under specified firing conditions, pierces armor, expands more than a certain percentage upon impact, or ignites upon contact.

Additionally, the federal government should require domestically-manufactured firearms to incorporate the same safety features as imported firearms; We should encourage or mandate the use of trigger locks, limit magazine sizes, and continue to fund research into "Smart Gun" technologies capable of rendering firearms unusable except by their owners.

Again, the basic problem with this entire concept is that it would miss the people who are the problem, and restrict the freedoms of the people who do not cause criminal violence.

The report also suggests building a scientific basis for justifying gun control:

4. Support research to develop a sound scientific basis for preventing firearm injuries:

(a) Undertake research through the CDC and NIJ to better understand the risks and benefits of firearm ownership, the patterns of acquisition, ownership and use, and the causes of firearm injuries.

(b) Establish a National Firearm Injury Reporting System at CDC.

Mr. President, it is significant that the recommendations focus this so-called scientific effort on the Centers for Disease Control. That organization has been criticized by medical professionals for its political bias, including its stated political objective of making the private ownership of guns not only illegal, but socially unacceptable. Before the Government spends a dime, we can predict exactly what conclusions CDC will reach on any research involving gun violence.

Let us talk about the most cynical and disturbing section of this report: recommendations on reframing the public debate on firearms.

5. Reframe the public debate on firearms.

(a) Change the stage from politics and philosophy to science: We need to reframe the public discussion about firearms injuries, from a political or philosophical debate on "gun control" as an all-or-none binary intervention to a discussion based on scientifically documented risks and benefits of firearm access and rigorously evaluated policy options. This is a paradigm shift.

It would indeed by a paradigm shift, Mr. President—to get Americans to put liberty in second place, behind safety and the convenience of the Federal Government.

One thing this report neglects to mention is that the right to bear arms is not some abstract notion of the Founding Fathers. It is based on human experience in combating tyranny. An armed citizen has the power to resist threats from other citizens or the Government.

It is no surprise that the Federal Government is uneasy even about guns in the hands of law-abiding citizens. That is exactly what the Founding Fathers wanted: a very real check on the power of the Government over the people.

There are some people—even some in the Senate—who refer to the right to keep and bear arms as an anachronism. They do not think we could possibly see Government tyranny today.

Those people are turning their backs on the lessons of history—not just the history of this country, but the history of the world.

Generation after generation, country after country, governments have committed atrocities against their people—atrocities that could only be committed after the people were disarmed by gun control laws.

I do not suggest that all those who support gun control condone genocide or tyranny. However, after considerable study and reflection, I must suggest that history shows gun control creates an opportunity for oppression that does not exist with an armed public.

That is why this recommendation is so disturbing. To put aside all philosophical and political considerations would be to ignore the lessons written in blood throughout human history. Those are lessons we should never forget.

Let me move on to the next recommendation.

(b) Place specific changes in the context of multiple interventions: We need to let people know that progress in preventing firearms injuries will come just as the great progress we made in reducing motor vehicle deaths came not by banning cars, but from building safer cars, safer roads, getting drunk drivers off the roads, and enforcing licensing requirements. No one measure is the answer. The Brady law is one small step forward. It is not "either . . . or" it is "this and this and this . . ."

Can it be more clear, Mr. President? This is exactly what we are seeing

today from the administration and its antiliberty friends in Congress. It is not a single bill, but a thousand variations of the same theme of making guns, not people, responsible for criminal violence.

The next recommendation has my vote for the most cynical, coldly-calculated and manipulative recommendation in this entire report:

(c) Focus on children: Nobody will oppose programs to prevent children from shooting children. Need to focus on reducing access by children to firearms.

How well President Clinton's advisers know the American public.

They certainly are correct: If you frighten people into thinking their children are threatened, they will do as you want. They might even accept restrictions on their own personal freedom, if they can be convinced it will protect their children.

Well, that explains the administration's constant drumbeat about guns in schools. Whether or not the statistics are true, we can be sure there is an agenda behind it.

Senator KOHL and I produced an amendment to the crime bill to limit juvenile ownership and possession of guns.

Finally, Mr. President, we come to the last, and perhaps the most disturbing, of the firearms-related recommendations:

(d) Stress the importance of changing behavior and the social environment as additional ways to prevent firearm violence: We need to rebuild the social capital and address poverty, discrimination, lack of jobs, lack of education, lack of hope, and drugs and alcohol abuse. We have learned a lot of lessons about how to change behaviors as well as focusing on the firearms themselves. You can't take guns away from men who are frightened, from women who are scared, or from communities which are scared without giving them reassurance and a sense of security.

For me, this puts in perspective the President's interest in 100,000 new police on the streets of America. Maybe that is the kind of reassurance and sense of security that this administration thinks will create the right climate for taking guns away from law-abiding citizens.

The reason I bring this to the attention of the Senate today and in context of the debate of violence in the classrooms of America—which in part can be because of a lack of discipline or control that somehow our courts and this Congress has wrestled away from local school boards and State officials in being able to control deviant students, as they attempt to establish an educational environment—is we are going to debate the crime bill in a few days. Hopefully, we will see a conference before us. In that context, I hope that we can make sense of bringing about some good criminal law for this country.

We passed a Brady bill recently. We said that was it, or at least some of the gun control advocates said, that was it. The report says "No measure is the answer. The Brady bill is a small step." And then it said—and this is the report—"We want this and this and more" in an absolute form of attempting to establish a new mindset for control. It says, "A focus on children."

Believe it or not, they want to use children, to educate children, if you will, to manipulate the mind.

I do not often come to the floor and talk about these kinds of things, but this report by this administration has it in print. And when they found out what their people had said was controversial, they tried to hide it.

So let me say, in conclusion, Mr. President, after I wrestled this report out of the hands of this task force, I now have it available in my office. I think it is interesting reading for Senators and other people who are interested in public policy, but, most importantly, interested in trying to bring about good law that controls criminals, that creates the kind of environment that the Senator from Washington is trying to create, that allows discipline in our society, instead of somehow using the argument that we are out of control and in that environment need to take away certain rights from individuals that are now current and constitutional.

Those are important debates. What the Senator from Washington does is constitutional. What the Senator from California did was constitutional.

But let me suggest that the report of this administration skirts on the edge of ignoring our rights and our Constitution.

AMENDMENT NO. 2425

(Purpose: To provide local school officials control over violence in classrooms and on school property, and for other purposes)

The PRESIDING OFFICER. Under the previous order, the clerk will report the Jeffords amendment.

The bill clerk read as follows:

The Senator from Vermont [Mr. JEFFORDS] proposes an amendment numbered 2425.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of title IV, insert the following:

SEC. . LOCAL CONTROL OVER VIOLENCE.

(a) AMENDMENTS.—

(1) IN GENERAL.—In paragraph (3) of section 615(e) of the Individuals with Disabilities Education Act (20 U.S.C. 1415(e)(3)) is amended—

(A) by striking 'During' and inserting '(A) Except as provided in paragraph (B), during'; and

(B) by adding at the end the following new subparagraph:

"(B)(i) Except as provided in clause (iii), if the proceedings conducted pursuant to this section involve a child with a disability who is determined to have brought a weapon to school under the jurisdiction of such agency, then the child may be placed in an interim alternative educational setting for not more than 90 days, consistent with State law.

"(ii) The interim alternative educational setting described in clause (i) shall be decided by the individuals described in section 602(a)(20).

"(iii) If a parent or guardian of a child described in clause (i) requests a due process hearing pursuant to paragraph (2) of subsection (b), then the child shall remain in the alternative educational setting described in such clause during the pendency of any proceedings conducted pursuant to this section, unless the parents and the local educational agency agree otherwise.".

(2) EFFECTIVE DATE.—Paragraph (1) and the amendments made by paragraph (1) shall be effective during the period beginning on the date of enactment of this Act and ending on the date of enactment of an Act (enacted after the date of the enactment of this Act) that reauthorizes the Individuals with Disabilities Education Act.

(b) CONSTRUCTION.—Nothing in title XVII of the Elementary and Secondary Education Act of 1965 (relating to Gun-Free Schools) shall be construed to supersede the Individuals with Disabilities Education Act or to prevent a local educational agency that has expelled a student from such student's regular school setting from providing educational services to such student in an alternative setting, as provided by State law, policy, or otherwise determined by such local educational agency.

Mr. JEFFORDS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. KENNEDY. Mr. President, as I understand it, now there is a time allocation.

The PRESIDING OFFICER. The Senator is correct. The Senator from Vermont has 30 minutes, the Senator from Washington has 45 minutes on the amendment—excuse me, the Senator from Vermont has 45 minutes and the Senator from Washington has 30 minutes.

Mr. KENNEDY. As I understand it, there will be a debate on both of those amendments,

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. At conclusion of that time there will be back-to-back votes, the first vote on the amendment of the Senator from Washington and the second vote on the amendment of the Senators from Vermont and Iowa.

The PRESIDING OFFICER. Who yields time?

Mr. JEFFORDS. Mr. President, I yield 10 minutes to the Senator from Iowa. I will be happy to yield more as time goes by.

The PRESIDING OFFICER. Mr. HARKIN is recognized for 10 minutes.

Mr. HARKIN. Mr. President, let me see if I can, for the benefit of Senators who are here and those who may be in their offices, try to lay out the scenario that we have here.

We have two amendments pending, a Gorton amendment and a Jeffords

amendment. The first vote will be on Gorton, then a second vote on Jeffords.

What are the differences here? First of all, if I did not know the Senator from Washington better—and I know him well and he is a good man—I would say this amendment is a mean-spirited amendment. But I know the Senator better than that. I know he is genuinely concerned about violence in schools, as I am, and as we all are.

I also know the Senator from Washington would not in any way want to take away rights held by the most discriminated against and disadvantaged in our society—children with disabilities. No, I do not think the Senator from Washington would want to tell the most disadvantaged members of our society, children with disabilities, "I am sorry, you have no due process rights."

What is the issue here? The issue is whether or not the careful balance that has been struck in the Individuals with Disabilities Education Act, providing due process rights to children with disabilities and their parents and the interests of the schools—whether that careful balance will be ripped apart—that is the essence, basically, of at least one part of the amendment offered by the Senator from Washington.

Really, the Senator from Washington has two parts to his amendment. The first part is dealing with children with disabilities who bring weapons to school. When we passed the Gun-Free Schools Act, the amendment offered by Senator DORGAN and Senator FEINSTEIN was added as a part of the bill. It covers, basically, children who bring weapons to schools. But it leaves out children with disabilities.

The Senator from Washington brings children with disabilities under that Gun-Free Schools Act and says no matter what, disabled or not, if you bring a weapon to school then you can be removed from your current education placement and placed in an alternative placement for 90 days. To that extent, I have no problem with the amendment. Weapons are well defined. You know if a kid has a gun. To that extent we support it and that is what the Jeffords amendment does. The Jeffords amendment encompasses children with disabilities under the Gun-Free Schools Act.

So what is the difference between Jeffords and Gorton? It is the second part of Gorton that I believe is so harmful to children with disabilities. Here is what it says. In his amendment my colleague talks about a weapon. Then he says, "or a child with a disability who has demonstrated life-threatening behavior in the classroom or on school premises."

It is the inclusion of the phrase "life-threatening behavior" that rips apart the Individuals With Disabilities Education Act, and the due process rights of our children and their parents. Because what happens, then, is if this child demonstrates life-threatening behavior, they can be kicked out of school for up to 90 days. And then, if the parent of the child decides to contest that in a due process hearing and decides to go to court, why, then the child will be kept out of that school until the whole process is finished. That could be a year. We know how long it takes, sometimes, for court cases to be heard.

The Senator then tries to define life-threatening behavior. This is what galls me more than anything else. The Senator defines life-threatening behavior as "an injury involving a substantial risk of death, loss, or substantial impairment of the function of a bodily member, organ, or mental faculty that is likely to be permanent, or an obvious disfigurement that is likely to be permanent."

Where did this definition come from? This came from the sentencing guidelines for convicted criminals. We are not talking about convicted criminals here. We are talking about the most discriminated against members of our society, children with disabilities. And we are going to say: Life-threatening behavior?

Life-threatening function? It says here, "a substantial impairment of the function of a bodily member." What about a kid who has epilepsy and has an epileptic fit and falls over and hits his head? That is life threatening.

Or "mental faculty that is likely to be permanent." What about an autistic kid who sometimes beats his head against a wall? That could be life threatening or could be threatening to permanently damage that kid's mental faculty. It has nothing to do with whether that kid is a criminal or not. It has something to do with whether that kid is disabled or not. So we are not talking about convicted criminals. We are talking about the most disadvantaged members of our society.

Then the Senator sunsets it and says we will sunset this provision until we reauthorize the Individuals With Disabilities Education Act.

We have settled law in this area. We have a Supreme Court case, which I will talk about momentarily. It is working well. What the Senator from Washington would do with this amendment is stir the pot until we are able to report out a reauthorization of the Individuals With Disabilities Education Act, which my subcommittee on disability policy will report out sometime next year. But what this would do would be to open the doors for school districts to be able to define life-threatening behavior so as to throw children out of school because they are disabled.

You might say, schools would not do that, would they? Mr. President, that is exactly why we passed the Education of the Handicapped Act; why we superseded that with the Individuals with Disabilities Education Act. History is replete with kids with disabilities being shunted aside and thrown out of our schools and not educated simply because they acted a little bit different, or because they had a disability.

Again, in Iowa we have Mike McTaggart, the principal at West Middle School in Sioux City. He put it this way. He said, "I have no problems with the education guidelines." Mr. President, I ask the Senator from Washington to listen to this. Before Mr. McTaggart became principal of the school in Sioux City, their school had 692 suspensions; 220 of those were disabled. But Mr. McTaggart took over the school. He instituted policies of guidelines for the teachers reaching out to the parents to bring the parents in to talk with them, setting up individual education programs for the students. And what happened after he took over? The next year they had 122 suspensions; zero were disabled kids. From 220 in 1 year to zero the next year. That is because we had a principal who understood what it meant to have these guidelines in practice for disabled children. This is what the amendment offered by the Senator from Washington would rip apart.

Again, I repeat, the Jeffords amendment—to the extent the Senator from Washington wants to reach to those children who bring weapons and guns to schools, I have no objection to that. He is right on target.

But to the extent that the Senator from Washington wants to say that any child with a disability who exhibits a life-threatening activity can be thrown out of school, Mr. President, that is blatantly wrong. It is wrong, and we cannot allow that to happen.

Everyone cares about making our schools safe. No one cares more about having safe schools than parents with disabled children, because it is their kids that are usually the most vulnerable, the most picked on, the ones most threatened in our schools. Parents with kids who are disabled care very much about safe schools.

Mr. President, we are all concerned about the school officials, to ensure they have a safe environment conducive for learning, especially for kids with disabilities.

The amendment offered by the Senator from Washington is opposed by many key education groups: The National PTA; the National Education Association; the National Association of State Boards of Education; the Council of Chief State School Officers; the National Association of State Directors of Special Education; the Council for Exceptional Children; the Councils of Administrators of Special Education; the Consortium of Citizens with Disabilities; and the National Parent Network all oppose the Gorton amendment.

This amendment, as I said, tears apart the fabric of IDEA. Earlier in the day, I said to the Senator from Washington and to others that I have chaired the Disability Policy Subcommittee with great pride since 1987. Not once have I brought a bill dealing with disability issues to the floor of the Senate to have it amended. I do not do that, because I believe disability issues are so important that they should not be subjected to partisan wrangling or to inflammatory speeches or anecdotal types of stories that may inflame passions.

Since 1987—and I say this with great pride—we have worked together with Members from the opposite side of the aisle, with Senator DURENBERGER, who has been my ranking member since then. We have brought in disability groups. We have brought in school officials. We work these things out before so we have a consensus agreement and we have support, so when we bring a bill out here on disabilities issues, as I said, we never had an amendment.

I do not intend to have one on IDEA because we intend to work it out and we will cover these issues. But let us do it next year when we reauthorize the Individuals with Disabilities Education Act. Let us not do it on this bill. So we should reach a consensus.

Lastly, the Gorton amendment ignores a Supreme Court ruling, a 7–2 ruling, in 1988. It was a very conservative Supreme Court. The only two dissenting Justices objected on mootness grounds, not on the essence of the case. The case is Honig versus Doe, right on point with the issue I am talking about. It had to do with a school district that threw some kids out because they were acting up because they were disabled. I have to say this because, if you listen to the Senator from Washington, you would think that these schools and the teachers and superintendents have nothing available to them if kids act up and act in a threatening manner.

Let me read what the Supreme Court said in that 7–2 decision:

> The "stay-put" provision "does not leave educators hamstrung." The Department of Education has observed that, "while the child's placement may not be changed. . . this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others." Such procedures may include the use of study carrels, timeouts, detention or the restriction of privileges. More drastically, where a student poses an immediate threat to the safety of others, officials may temporarily suspend him or her for up to 10 school days.

So already if a child with a disability acts up, the school can suspend them for up to 10 days:

> This authority, which respondent in no way disputes, not only ensures school administrators can protect the safety of others by promptly removing the most dangerous of students, it also provides a "cooling down" period during which officials can initiate IEP review.

That is, the Individual Education Program review:

> * * * a cooling down period * * * and seek to persuade the child's parents to agree to an interim placement. And in those cases in which the parents of a truly dangerous child adamantly refuse to permit any change in placement, the 10-day respite gives school officials an opportunity to invoke the aid of the courts which—

And I have to add this emphatically—

> which empowers courts to grant any appropriate relief.

So the school can do all of these things. Basically what the Gorton amendment does is it overturns a 7–2 Supreme Court decision in 1988, as I said, by a very conservative Reagan Supreme Court.

In closing, Mr. President, let us not disturb this balance. For every story that the Senator from Washington can tell or any other Senator can tell about a disruptive student in a school and the problems that causes, I can tell a story about a child with a disability who acted up because the school did not provide that child with an individual education program.

I have case after case after case, hundreds, thousands of cases where kids with disabilities, because the school did not want to deal with them, were kicked out without any due process of law.

What the Individuals With Disabilities Education Act does is it provides that balance, that carefully crafted balance to give the schools the authority—up to 10 days, separate classrooms, study carrels, detention and, if need be, to go to court to get any relief necessary, at the same time to provide that the parents can keep their child in that school studying during that period of time.

I would hate to see that careful balance disrupted by some stories of violence in schools. We are all opposed to that. We all want to stop the violence in our schools, but, please, in doing so, I plead with my fellow Senators, do not take it out on the most discriminated against of our kids, our disabled children. Do not do that. We fought too long and too hard to get them their rightful place in the Sun in our country. Do not knock them down again.

Mr. BURNS addressed the Chair.

Mr. GORTON. I yield 5 minutes to the distinguished Senator from Montana.

The PRESIDING OFFICER (Mr. AKAKA). The Senator from Montana is recognized.

Mr. BURNS. Mr. President, I do not think there is anybody in this entire United States who understands this subject better than the Senator from Iowa, nor has been a better champion of that. I value his counsel, but I also rise today as a supporter of the amendment.

When the Senator speaks of balance, I think we have to put it in the context of a learning environment. I have heard from my schools in Montana that when that balance is upset, we have to take into consideration who else is in that environment to learn—it is a learning environment—and that takes that away.

Teachers in our schools are often threatened, even physically attacked by students, and these violent students often victimize other classmates as well and, in doing so, they also put themselves in jeopardy. Yet, in many cases these violent students cannot be removed from schools because of the provisions of this act, and also there are advocacy groups—God bless them and we have to have them—that just will not let it happen. I do not think it was the intention of this bill's authors to allow dangerous students to remain in the classroom. In fact, I know it was not. I know how thoroughly they crafted this legislation and how they feel about it. We have to take a look at the learning environment. Yet, because of this law, a small number of students can jeopardize the learning process and the safety of teachers and students.

This amendment allows school officials to take that student out of that environment and put him or her in an environment where it is safer not only for the school but also for the student him or herself. It has to be done. You just cannot willy-nilly take the student from the class.

This is a vast improvement of the current situation, and I strongly support returning the decision to remove dangerous students from the classroom back to the local level. Our children deserve the chance to learn and our teachers deserve the chance to teach in a safe environment.

Yes, we will reauthorize IDEA in the next Congress, but this amendment is a giant step in the correct direction until we do.

I thank my colleague from Washington, Senator GORTON, for introducing the amendment and I urge my colleagues to support it.

Mr. President, I yield back the remainder of my time.

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, I yield myself 3 minutes from the time allotted to the Senator from Vermont.

The PRESIDING OFFICER. The Senator has 26 minutes and 40 seconds.

The Senator is recognized for 3 minutes.

Mr. DURENBERGER. Mr. President, I rise today in opposition to the amendment by my friend from Washington, Senator GORTON, concerning disciplining disabled children, and to support the amendment offered by my colleague from Vermont, Senator JEFFORDS.

The amendment by my colleague, Senator GORTON, is well intentioned. I

have known him as long as he has been here on his two trips to this place and I know a man of both experience and conviction. But from my own experience, and particularly my experience with the bill which is entitled the Individuals With Disabilities Education Act, and some of the difficulties that my colleague from Iowa has already spoken to, that we have dealt with in terms of issues of due process, I must characterize his amendment as well intentioned but as disregarding the due process procedures which are set forth in the Individuals With Disabilities Education Act. It would permit arbitrary action by school officials regarding the discipline of children with disabilities, and that is the very thing that IDEA is supposed to prevent.

IDEA establishes a process, a process that allows a school district to unilaterally exclude children with disabilities who exhibit dangerous and disruptive behavior from the classroom for up to 10 days. During that period of time, school officials can meet with families to determine how to deal with the student's situation. If a child is removed for more than 10 days, parents can seek a due process hearing and/or other appropriate remedies.

While this process, Mr. President, is probably not perfect—in fact, I am sure it is not—it does balance the rights and the interests of involved parties. We are, all of us, concerned about violence in our schools, but the Gorton amendment is not the best way to respond to this problem. It could inadvertently prove harmful to those disabled students whose behavior appears to be disruptive but does not in actuality pose a serious threat to other persons.

I believe we should focus on those students who truly pose a danger to other students and teachers. For that reason, I believe that the amendment by my colleague, Senator JEFFORDS, focuses on those students and reasonably addresses the problems of school violence. It builds on the Gun-Free Schools Act of 1994, which is already part of the Goals 2000 legislation. The act provides that local education agencies may not receive Federal education funds unless they have a policy requiring expulsion from school for at least a year for students who bring guns to school. The Jeffords amendment includes a sunset provision that becomes effective when the IDEA reauthorization is signed into law.

We need to find out, Mr. President, whether violent behavior by students with disabilities is a serious problem. It is my hope that all of us—lawmakers, educators, parents, and students—can sit down together next year during the IDEA reauthorization to find a way to resolve this issue. I know my colleague from Washington will be here. I know he will be involved at that time in that issue, and I think his contributions at that time will be much more valuable than the one he is suggesting now. So I urge my colleagues to oppose the Gorton amendment and support the Jeffords amendment regarding discipline of children with disabilities.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota yields the floor. The Senator from Washington [Mr. GORTON] is recognized.

Mr. GORTON. Mr. President, just a brief remark while I await the arrival of my colleague and cosponsor of this amendment, Senator LIEBERMAN.

First, of course, this Senator is very much in agreement with the steps that are taken in the Jeffords amendment, an amendment which was only offered as a result of the pressure imposed by the amendment proposed by this Senator and which, ironically, amends IDEA just as precisely as does the Gorton amendment. And if the additional provisions of the Gorton amendment do not provide due process, neither do the provisions of the Jeffords amendment to exactly the same degree.

The answer, of course, is that the Jeffords amendment does provide due process, as does the one proposed by this Senator as well.

The difference between the two of us is, first, a trust in the ability and faithfulness of individual school authorities to make determinations about the learning environment of their schools.

That we should be discussing in this mostly empty body a national set of rules which we impose on every school in the land without the slightest knowledge of what takes place in those classrooms, overriding the judgments of individual teachers and principals and school board members, to this Senator answers the question all by itself. Of course, we should not be doing so. We can operate with the greatest of good will, as is clearly the case with the Senator from Iowa, and still make mistakes, and those mistakes are made every day by those who are violent in school, those who bring weapons to school, those who engage in life-threatening behavior in school, driving out of the schools very often sometimes teachers, sometimes other peaceful students.

That is the real world. And it is to provide some degree of balance that this amendment was introduced. Would it reverse the wonderful work of the superintendent in Iowa? Of course, it would not. It would have given that superintendent in Iowa a greater degree of flexibility in solving his own problems than he has under the present law.

Will this amendment mean that if there is a court challenge, a student can be kept out of school indefinitely? Of course not. There is a 90-day limit whether there is a court challenge or not.

Does this mean that these students will get no education? Of course not. In order to utilize the provisions in the Gorton amendment, the school district must provide an alternative education atmosphere even for the disruptive and violent disabled students.

Now, a few days ago we simply had in our proposed amendment authority for school districts to deal with life-threatening behavior. The very groups that are now protesting against our definition protested against that phrase because they felt it was far too broad, that it allowed too much authority for individual school districts, and so we came up with the narrowest definition of life-threatening behavior we could find, that in the criminal sentencing guidelines, which is deliberately narrow so that people cannot be sent to jail for this kind of activity unless it truly is life-threatening.

So now for having come up with the narrowest definition of life-threatening behavior, in order to attempt to oblige the other side, we are criticized for it. But essentially, when it gets right down to it, these opponents say that school districts should not have the authority to remove from a regular classroom to a special classroom students engaged in truly life-threatening activities for a period of 90 days without going to a Federal court to do so.

That is really what the difference is for. If you do not trust your school authority to be able to determine a life-threatening behavior on the part of students to themselves or most often to the other students, and get those students out of the classroom for 90 days, then you do not trust your school administrators or teachers to do anything. They should not be teaching or administering schools.

A vote against my amendment says that we cannot trust anyone in the United States except ourselves, a Federal bureaucracy, and the U.S. district court judges to suspend a student from school for more than 10 days for life-threatening behavior.

Mr. President, I just do not believe that of our school authority. The people who are on the front line want this kind of authority. They deserve more authority than this amendment gives them. We may debate more authority at some time next year. But they certainly deserve this now.

One final comment on the Supreme Court decision, Honig versus Doe. Of course, we are changing the result of Honig versus Doe. It is not a constitutional decision. It is a decision interpreting the Individuals With Disabilities Education Act, interpreting it quite correctly, interpreting it very narrowly because that is what Congress meant according to the Supreme Court. But as in other Supreme Court decisions on statutory interpretation, if we change the statute, the Supreme Court will change its decision. It was

not saying it thought it was a good idea. It is saying this is what Congress passed, we suggest that Congress change that law, and allow school district authority a reasonable degree of discretion in bringing peace and order to their classrooms.

I note the presence on the floor of my principal cosponsor, the Senator from Connecticut. I will yield to him such of my remaining time as he may need.

Mr. BENNETT. Mr. President, before we hear from the Senator from Connecticut, will the Senator from Washington yield for a question?

Mr. GORTON. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Washington has 18 minutes and 50 seconds.

Mr. GORTON. Yes. I yield.

Mr. BENNETT. Mr. President, I would ask the Senator from Washington from his legal background if the circumstance currently applying to those students under the Individuals With Disabilities Education Act constitutes a different class under the criminal statute for people under that act than ordinary students who are not under that act?

Mr. GORTON No. This is not a criminal statute, I say to my friend from Utah. It establishes two very distinct classes of students: The nondisabled student who is subject to the full discipline of the school, and the disabled student over whose discipline the school district has very, very narrow authority. As this Senator said earlier, we are now getting the claim that the very fact of violent activity or bringing the gun to school is evidence of disability so that the student cannot be disciplined.

Mr. BENNETT. The Senator in his explanation has given me the understanding that I was seeking which is that in effect two different classes of students have been created, perhaps not under a criminal act. But in administrative fact you have created a circumstance where disciplinary actions for one class are not appropriate for another class.

Mr. GORTON. Are not legal for another class.

Mr. BENNETT. Not legal for another class, and it seems to the Senator from Utah that this creation of two separate classes is very detrimental to any kind of orderly control of a student circumstance.

I thank the Senator for his clarification.

Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut [Mr. LIEBERMAN].

PRIVILEGE OF THE FLOOR

Mr. LIEBERMAN. I thank the Chair.

I ask unanimous consent that Charles Rothwell, who is a fellow in my office, be allowed floor privileges for the duration of the debate on the School Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JEFFORDS. Mr. President, whose time is the Senator speaking on?

Mr. GORTON. Mine.

Mr. LIEBERMAN. It is my understanding that I was speaking on the time under the control of the Senator from Washington.

Mr. President, I am a cosponsor of this amendment with the Senator from Washington. I am a cosponsor because I have received mail and calls from principals and teachers in Connecticut complaining about the current state of the law.

Mr. President, let me just step back and put this in context. If you ask the American people today whether they think this country is headed in the wrong direction or the right direction, almost 70 percent say the wrong direction. This has puzzled social commentators and pollsters because the economy is in recovery and the economy is supposed to determine so much of the public's attitude.

But in my opinion, the major reason the public sees America going in the wrong direction is that they see a loss of values in our country, a loss of standards, and a loss of discipline. There is a sense that too much of our country is out of control, and that we can no longer take for granted some of the basic assumptions that we as Americans used to make about what it meant to live in this great and civilized society.

One of the basic assumptions that I grew up with, that sadly is no longer true in so many cases, is that a parent can send a child to school and not worry about the safety of the child on the way to school or in school. The facts here are startling. My colleagues indicated them earlier.

Let me mention a few. A study by the Centers for Disease Control and Prevention through their epidemiologic surveillance systems tell us that in 1990, 20 percent of all students reported carrying a weapon to school at least once in the last preceding 30 days. That increased to 26 percent in 1991. In 1990, 31 percent of all male high school students carried a weapon to school during the preceding 30 days, and that increased to 40 percent in 1991.

Mr. President, we have heard and read and seen of too many cases of violence committed against students in the schools, and too many cases of violence committed against teachers.

The other thing is I must be getting old, although I do not think so. But you know, we took for granted that when you went to school you treated the teacher with respect. As a matter of fact, there was some fear of the teacher and the principal. That was not so long ago. Today, as I talked to teachers, I find—not all, obviously—but all too many telling me that it is impossible in the first instance to maintain a basic level of order in the classroom so that they can even have a chance to teach the students what parents send their schools to learn. Beyond that, the guns in the classroom, violence, and acts of aggression committed against teachers are unthinkable in our country generally.

So we have a problem of crime and safety in our schools. It is a problem that this Chamber has recognized, both in one of titles of the bill before us, and in fact in title V of this act, and in fact in the anticrime bill which has just emerged from conference this morning.

So I think as we approach the amendment offered by the Senator from Washington, which I am cosponsoring, we have to acknowledge that there is a problem. Let us go to what he and I are trying to do, which is to create, not even a level playing field, but a playing field that at least makes it somewhat more likely that teachers and school administrators will be able to maintain order in the schoolroom, to protect their safety and the safety of other students, let alone to create the basic preconditions in which teaching and learning may occur.

I heard my colleague and friend from Iowa speaking before. He has been a great leader in the effort to obtain equal rights and opportunities and protections for those who are disabled in our society, and I respect him greatly for that. It just seems to me that the provisions of the IDEA, the Individuals With Disabilities Education Act, passed in 1975—almost 20 years ago—have been used in a way that does not recognize the reality that I have just described in too many classrooms and schools in America today and, in that sense, the noble purposes of that act are being misused.

Mr. President, let me read you part of a letter I received from a teacher in Connecticut, who describes the IDEA as, "The law that was passed by Congress was indeed a good and needed law, but it has been made into a dangerous and ineffective law." He tells the story about students who have gone through a pupil planning and placement team, the PPT, process, and are then labeled "socially and emotionally maladjusted", SEM students. Students are usually brought before one of these PPT processes because they act out in one form or another. That is, they break the rules of the school in the classroom repeatedly. They are diagnosed as SEM and are given special help by a sociologist or school psychologist, which is all appropriate, and they may be put in special classes. This teacher says, "So far so good. The problem develops when they continue to break the rules. A different set of standards are now applied," just as the Senator from Utah has suggested. "Punishment for the same infraction

for a special education student and a mainstream student differ, with special education students escaping with much less of a punishment."

Here is a basic problem—and, again, I am reading from this teacher from East Hartford, CT: "The expectations of behavior of a special education student is lower. The rules are changed, the punishments differ. How do we ever expect this student to become socially and emotionally adjusted to the norms and rules of society when they are not required to?" the teacher asks. He says, "I am not talking about matters of style; I am referring to dangerous activities which threaten the safety of the entire school population. In East Hartford," this teacher goes on, "students who carry knives to school are expelled for 180 days. That is permitted by State law. However, a special education student"—that is, one who has been adjudged so under the socially and emotionally maladjusted category, or other categories—"would only be given a maximum 10-day suspension, without extraordinary and cumbersome and expensive measures by the school system." He goes on to say, "We are sending the wrong message to our kids, and they know it." He says, "As a teacher, I know that these students think, they can't touch me. They act all over the school as if they are immune to the rules and norms of school and classroom behavior. Indeed, why shouldn't they? They are immune."

I do not present this as the final word on the subject. I present it as the cry from the heart of a teacher trying to be a teacher, who feels that this well-intended law is now being misused to the detriment of the safety of the students and teachers and administrators in the school system, let alone the ability to teach.

Mr. President, what the Senator from Washington has done is just to give—again, in fact, obviously the IDEA law dictates to the local school system. We are trying to free the local school system from that Federal control and let them discipline students a little more like they would without any Federal control, to hopefully reestablish some sense of order and respect for teachers and school administrators. In fact, we do not create a totally level playing field. In the case that the teacher from Connecticut cited, a student with a knife is expelled for 180 days, but that is not so for a student covered by the IDEA program. Under this amendment, that student, for 90 days, is put into a special educational setting, and the process goes from there.

Mr. President, the bone of contention here—because I know the Senator from Vermont and others agree there should be an expulsion when a gun or weapon is carried to school—is this whole question of extending or removing the special protections when a student has committed a life-threatening act. This is a pretty tight definition of life-threatening act. I know some of those who oppose the amendment Senator GORTON and I have sponsored feel it would be misused and teachers and administrators will pick on students who are disruptive who should not be picked on. But that switches the traditional burden here in a way that does not make sense and, to me, is very disruptive. It suggests that we have to begin with a distrust of the educators and put the burden on them, as opposed to giving them the benefit of the doubt when dealing with disruptive students.

I believe from the bottom of my heart that the typical teacher and administrator is not going to misuse the disciplinary powers they have against a child who would come under these special protections, because they know the burden they face in court if they do. Let us talk about the definition of life-threatening behavior in this proposal. Defined as "an injury involving a substantial risk of death, loss, or substantial impairment of the function of a bodily member, organ, or mental faculty that is likely to be permanent, or an obvious disfigurement that is likely to be permanent." It is a tough definition, I understand. A student under the IDEA program could, I have heard stories like this from teachers in Connecticut; and any student could, but we are talking about the differing capacities to punish a student—could grab a teacher, push her up against the wall, call her names, and not come under the more level playing field of discipline that this amendment would create, because that is not life-threatening behavior.

I understand the tremendous work that the Senator from Iowa and others have done in this area, and I understand that the Individuals With Disabilities Education Act is up for reauthorization in the next Congress. But it seems to me that this is a matter of real urgency. I hear it from teachers and principals in Connecticut. I think we ought to act here to give them the authority they need, with the confidence that they will use it with good judgment, understanding that in this amendment there is a sunset provision that says that this amendment, if it passes, shall be effective until the date of enactment of the reauthorization of the Individuals With Disabilities Education Act. In other words, there is a sunset provision here. So it will receive full consideration, or reconsideration, by the committee and by this Chamber during the reauthorization process of the IDEA.

There is a crisis out there, and it is a crisis of fundamental values, and I think it calls for immediate action.

Mr. HARKIN. Will the Senator yield?

Mr. LIEBERMAN. I yield to my friend from Iowa.

Mr. HARKIN. Mr. President, I thank my friend from Connecticut for yielding. I know he has the interest of the kids at heart. I know he is a well-meaning individual, and I know that the Senator from Connecticut would not in any way want to again kick down kids with disabilities any more than they have been in our society.

I know we have problems of violence in our schools. I know we hear from teachers. I hear from them, too. But we also hear from parents with children with disabilities who are having all kinds of problems getting schools to adhere to the law.

I mentioned before the Senator arrived on the floor of a principal at a school in Iowa. The year before he became superintendent they had 220 disabled kids expelled from school. He came and took over. The school instituted the individual education programs, got the teachers and the parents together. The next year zero kids were expelled who were disabled.

Again, a lot of administrators say it is easier to get rid of them and get them out of there.

Mr. LIEBERMAN. Mr. President, I thank my friend from Iowa. I appreciate what he is saying.

Of course, as I said before, I respect greatly his leadership and record in this area. I say to him that this particular definition of life-threatening behavior was chosen because it is a tough definition; that is, it is demanding. It creates a high standard so that it will not send a message out mistakably to teachers and school administrators that simple disruptive behavior can remove the special protections.

Disabled for this case is mostly talking about socially, emotionally maladjusted kids received under IDEA.

Again, it leaves out a range of behavior that most of us and most parents who send their kids to school find horrific. Again, I heard the stories from the teachers, where students are picked up and pressed against the wall and students threatened.

This happens from kids in the IDEA program and a lot of kids outside. We are just saying if that happens, or something worse, the teacher ought to have the ability to discipline.

We are not evening out the playing field totally. We are simply saying that a student exhibiting this life-threatening behavior has to be placed in an alternative education program for not more than 90 days. That student will still receive special treatment as compared to the students not in this special program.

Mr. President, I gather my time is up. I thank the Chair.

I ask support for the amendment and yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized, 23 minutes remaining.

Mr. JEFFORDS. How much?

The PRESIDING OFFICER. Twenty-three minutes are remaining.

Mr. JEFFORDS. Mr. President, I would like to try to simplify this matter as much as I can.

We have had a lot of discussion, minutes and hours of discussion, but I think we should get down to the very simple aspects of what we are talking about here. I think my colleagues will see the merit of voting for the Jeffords amendment and against the Gorton amendment.

The question is, do you make any distinction for children with disabilities? Under the Gorton amendment, if there is a gun involved with bodily harm, or a threat of bodily harm, you are out. It is as simple as that. You are out for a year, whether it is related to the disability or unrelated to the disability. And that distinction is important. There is no difference. You are out for a year.

My amendment treats disabled children differently from nondisabled children. If the offense is related to the gun, but unrelated to the disability, you are out for a year, the same as the Gorton amendment. On the other hand, if it involves a gun and you are a disabled child and it is related to your disability, you are out for 90 days during which time they can determine as to whether or not you will be in an appropriate educational situation to the extent under IDEA. Rather than 10 days, it will be 90 days. During that period they can determine what additional remedies ought to be provided. That is if a gun is involved.

Let me explain that kind of a situation to you and give some meaning to it. Suppose a child is very mentally retarded, of minimum IQ, and his friends think it would be fun to play a trick. They have a gun. It is unloaded. There is not going to be any real threat or harm. They say, "Why don't we play a trick on little Jane? She is a pain, and she is really a miserable little child. So why don't you take this and, just to teach her, go up and point that gun at her and see what she does?"

Well, under the Gorton amendment that child is gone for a year out of school. Under our amendment the child would be under IDEA. The 90-day provision would apply rather than the 10-day provision so that it can be determined if there was actually a threat. What kind of action should we take during that period of time?

That takes care of the gun situation, and I would hope that my colleagues would see the merit in giving flexibility and not interfering with the provisions of IDEA for a child under those circumstances. I do not believe any of my colleagues would say under those particular situations, that child ought to be thrown out of school for a year.

Let us go to the case of a situation involving the threat of bodily harm and related to the disability. Under those circumstances, the person would be under IDEA's 10-day provision, but I would point out that under the Supreme Court decision that has dealt with these kind of problems, there is much that can be done to ensure that there is no bodily harm or threat of bodily harm created where they can take the actions necessary in order to prevent a recurrence of that particular incident. I will read to you a summary of the Supreme Court decision in Honig versus Doe, 1988:

> The Supreme Court dealt with the issue in Honig v. Doe, where it held that the statutory provision was clear in its requirement that the child "shall remain" in the current educational placement pending the completion of due process procedures. However, the Court found that Congress did not leave school administrators powerless to deal with such violent students since the following procedures were allowed: The use of temporary suspensions for 10 days, interim placements where parents and the school are able to agree, and the authority for school officials to file a suit for appropriate injunctive relief where an agreement cannot be reached. The Supreme Court found that IDEA balanced the rights of the child with a disability to remain in school by denying a school the unilateral power to expel such children with the rights of the school to maintain a safe learning environment. However, although these procedures allow for control of violent children with disabilities, it has been argued that they are cumbersome, hindering the ability of school officials to maintain a disciplined environment conducive to learning.

However, there is a different issue with respect to the rights of others as to continuing their education, but it is clear that under the Jeffords amendment, and not under the Gorton amendment, disabled children will be not disrupted unless it is in the situations which I described, that is if it is related to the gun. However, there is a change. There are 90 days to evaluate and take these things into consideration rather than the 10 days. However, if it is related to a disability and related to bodily harm or threat, you are under IDEA, with all of the protections which I mentioned that the Supreme Court of the United States had found available.

So I want to say this. We have had a lot of discussion on this issue. There is a lot over emotion connected with it. But there is nothing that will make our disability community more anxious, and more concerned, than to know that these poor unfortunate children with disabilities will be arbitrarily, without hearing, and without any attempt to protect themselves, be thrown out of school under the Gorton amendment.

So I would hope you will keep in mind—I suppose you can vote for both amendments if you want to, and under the procedure you can. But if you have compassion and understanding for people who have children with disabilities who would be concerned and worried that their child may be placed in a position like I mentioned earlier, through no fault of their own, but because of an impairment in their thinking or some other problem, reject the Gorton amendment which will throw them arbitrarily out of school for a year.

So I hope, after looking at this, that my colleagues realize that it has nothing to do with the situation with a gun, and unrelated to the disability. Under those circumstances, the Gorton amendment and the Jeffords amendment are the same.

On the other hand, in those kinds of circumstances where a disability of the child is involved, should they not be given some special consideration?

That is all we are asking in the Jeffords amendment. If you are compassionate, and believe that children with disabilities need a little extra care, a little extra feeling, a little extra attention to the problem, then you ought to vote for the Jeffords amendment to ensure that they get the protection that is presently guaranteed them under the law.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Vermont has 14 minutes remaining.

Mr. HARKIN. How much time does the other side have remaining?

The PRESIDING OFFICER. The time has expired on the other side.

Mr. JEFFORDS. I yield such time as the Senator would desire.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, it is impossible to understand the detrimental effect of the Gorton amendment on children with disabilities without having a better understanding of the congressional intent in enacting IDEA and the specific components of the legal framework.

In 1975, when Congress passed the Individuals With Disabilities Education Act [IDEA] more than one-half of the Nation's children with disabilities were not receiving appropriate educational services and one out of eight of these children was excluded from the public school system altogether. According to a study conducted by the U.S. Department of Education, 82 percent of emotionally disturbed children were unserved in 1974–75.

The history of the act makes it clear that Congress was deeply concerned that school officials were using disciplinary procedures to exclude and deny appropriate education to children with disabilities. Congress determined that the best way to assure that its mandate that every child with a disability receive a free appropriate public education was carried out was to establish procedural protections for parents to guard against unilateral school district action.

The specific provisions of the act require the school districts to provide a free appropriate public education for each child with a disability, regardless

of the nature or severity of the child's disability in conformity with the child's individualized education program [IEP]. The IEP is a program "specially designed to meet the unique needs" of the child with a disability.

Placement decisions must then be made by individuals knowledgeable about the child and the meaning of the evaluation data.

In short, the whole thrust of the IDEA is to make the placement fit the unique needs of the child and to do so through meaningful parent participation in partnership with educators.

Under IDEA parents are afforded a number of procedural protections when disagreements with school officials arise. In the words of the U.S. Supreme Court in Honig versus Doe these protections are "designed to ensure parental participation in decisions concerning the education of their disabled children and to provide administrative and judicial review of any decisions with which those parents disagree."

Specifically, under the IDEA a parent can challenge a decision by a school official and request a due process hearing before an independent hearing examiner. The parents also have a right to appeal this decision to the courts.

Pending the resolution of the appeals, the child is entitled to stay-put in his or her then current educational placement unless the public agency and the parents of the child agree otherwise.

It is the stay-put provision that Senator GORTON is attempting to gut through his amendment. This is the provision that several school officials tried to gut several years ago in the Honig versus Doe case.

The issue in Honig versus Doe, concerned the interpretation of the stay-put provision. More specifically, the issue in the case boiled down to whether there is a dangerous exception to the stay-put provision

Senators CHAFEE, JEFFORDS, KENNEDY, along with myself and other Members of Congress, in a friend of the court brief, urged the Court to conclude that there was no such exception. As the brief pointed out, "The legislative history overwhelmingly illustrates Congress' desire to prohibit unilateral school actions."

Consistent with the urging of the Congressional brief, the Court concluded that Congress

* * * very much meant to strip schools of the unilateral authority they had traditionally employed to exclude disabled students from school . . . and directed that in the future the removal of students with disabilities could be accomplished only with the permission of the parents or, as a last resort, the courts.

The Court also concluded that Congress took these actions because of findings that school officials used disciplinary measures to exclude children from the classroom.

Senator GORTON would lead you to believe that school official's hands are tied by IDEA; that they have no recourse against dangerous children.

Mr. President, this is not true. Period. Let me quote from the Supreme Court decision: the stay put provision "does not leave educators hamstrung."

The Department of Education has observed that, 'while the child's placement may not be changed [during any complaint proceeding], this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others.' Comment following 34 CFR 300.513 (1987). Such procedures may include the use of study carrels, time-outs, detention, or the restriction of privileges. More drastically, where a student poses an immediate threat to the safety of others, officials may temporarily suspend him or her for up to 10 school days. This authority, which respondent in no way disputes, not only ensures that school administrators can protect the safety of others by promptly removing the most dangerous of students, it also provides a "cooling down" period during which officials can initiate IEP review and seek to persuade the child's parents to agree to an interim placement. And in those cases in which the parents of a truly dangerous child adamantly refuse to permit any change in placement, the 10-day respite gives school officials an opportunity to invoke the aid of the courts under 1415(e)(2), which empowers courts to grant any appropriate relief.

As I explained previously in my remarks, Mike McTaggart, principal at West Middle School in Sioux City, IA put it this way, "I have no problems with the special education guidelines. The Court decisions make sense to me." We heard from several administrators from the State of Washington. One told us that in 10 years he never had to go to court for an injunction. The threat alone was sufficient with even the most recalcitrant parents. He went on to say that "the law does not put us in an unreasonable situation but does provide an important protection for students with disabilities."

The U.S. Department of Education has explained the current policy regarding disciplining children with disabilities in letters responding to individual inquiries. Unfortunately, these interpretations are not widely disseminated and therefore many educators around the country are totally unaware of the options they actually have.

Current policy regarding the disciplining of children with disabilities is consistent with Honig versus Doe case.

In brief the policy is as follows:

First, a school district can unilaterally exclude children with disabilities from the classroom for dangerous or disruptive behavior, no question asked, for up to 10 days. During this period, the school district can use normal disciplinary procedures and meet with the family to determine what alternative strategies, including alternative placements, might be more appropriate.

Second, if the removal is for more than 10 days, it is considered a change of placement.

Third, if parent and school officials agree on the need to change the placement or the child's IEP, the process stops here and the modifications are implemented.

Fourth, a parent that disagrees with the school district's proposed actions may file a complaint, seek a due process hearing, and insist that the child "stay put" in his or her current placement pending the resolution of the appeals.

Fifth, at all times, school officials can use "normal" disciplinary procedures such as study carrels, timeouts, or other restrictions if it is determined that the child's behavior was not related to his or her disability. If the child's behavior is related to the disability, these procedures can be used if they are consistent with his or her IEP.

Sixth, if the school district believes that it would endanger other students to return the child to his or her current placement, the school district can go to court and seek an order permitting a change in placement.

In sum, the legal framework of IDEA established by Congress with its focus on providing meaningful parent participation through the reliance on due process protections was enacted to put a stop to the shameful history of exclusion, segregation, inadequate education, and expulsion of children with disabilities.

The Gorton amendment punches a gaping hole in this legal framework.

The current legal framework carefully balances the rights of parents and school officials in order to bring about agreement between the parties. Parent/educator partnership is the linchpin of the law. The law encourages communication and dialogue, particularly in the development of the IEP. However, people don't always agree. When potential disagreements surface additional tools are included to nudge the parents and educators to keep talking. Parents can assert that their child must stay put pending appeals. The school district can assert its authority to override this right and obtain a court order to remove the child.

Thus, each party has a tool at their disposal which they can use or threaten to use. In an overwhelming majority of cases, the availability of these tools forces both parties to come to an agreement.

This amendment destroys that balance by taking away the parents' tool and allows the school district to make unilateral unchecked decisions. My colleague from the State of Washington will tell you that his amendment is very narrow because it only deals with life-threatening behavior. This amendment is not narrow. Under this amendment all a school official has to do is assert that any behavior is life-threatening and the school official can unilaterally change a disabled child's placement. Thus, the stay-put provision is effectively repealed by this amendment.

By allowing unilateral placements, there is a strong likelihood that in far too many school districts around this country we will return to the bad old days of exclusion, isolation, segregation, and the denial of appropriate services for children with disabilities.

What an irony that this should occur the week disabled people around the country are celebrating their independence day, for on July 26, 1990, President Bush signed into law the ADA.

In sum, the Gorton amendment, by effectively repealing the stay put provision upsets the careful balance between the rights of parents and school officials.

The Gorton amendment is also bad policy. It will result in an increase not a decrease in violence in the schools. Let me explain.

The fundamental point made in the Chafee-Jeffords-Harkin friend of the court brief in the Honig versus Doe case was that we do not have to choose between school chaos and denying appropriate education to children with disabilities to maintain decorum in the schools. The brief stated:

Congress believed that the system could be modified in a manner that would protect the interests of all students and school personnel by requiring the development of appropriate programs, providing supportive or related services, training of personnel, and tailoring educational programs to the unique needs of the individual child with a disability.

The brief went on to explain that allowing a dangerousness exception to the stay-put provision—as proposed by the Gorton amendment—would:

* * * establish extremely bad public and educational policy. School districts would have no incentive to actually develop an appropriate program to address the needs of a disruptive student pending due process procedures * * * Compliance with the law encourages utilization of state of the art educational strategies,* * *.

Suspension for behavior related to a child's disability puts the blame on the disabled child instead of on the inadequacies of the system. This is exactly what Congress sought to avoid in enacting IDEA.

A child with a disability whose needs are not being met or properly addressed may suffer from cumulative frustration and confusion and may, as a result, present behavior problems.

Under the current law, the parent could assert that the child's disruptive behavior is a manifestation of the failure of the school system to provide an appropriate education and insist that the appropriate services be provided.

Under the Gorton amendment, the school system could remove the child by alleging that the behavior is life-threatening even when the disruptive behavior is the direct result of the system's failure to provide necessary services. The school system could then isolate the child; provide few, if any, services; or place the child in a restrictive setting where he learns even more aggressive and violent behavior.

More violence, not less, will be the outcome. This outcome is intolerable. In the words of the Chafee-Jeffords-Harkin brief:

Punishing a disruptive child by exclusion for weeks, months, and even years during the pendency of administrative and court proceedings when the school district could provide modifications to the child's program is to excuse system failure by projecting blame onto the student.

This is not some hypothetical possibility. It is real and it is happening today to children with disabilities in school systems that act in violation of existing law.

Let me give you an example. Titus is a disabled student. For 6 years he had received special education services. His grades were average. He was not a behavior problem. When he entered seventh grade and changed schools, the school system stopped providing special education because of an administrative error and without notifying his parents.

During this year he was failing all his courses. Without the special education services, his learning disability prevented him from comprehending what the teachers were talking about. One day Titus was involved in a fight at school with another student. The fight occurred when another student made fun of the fact that he was failing his courses.

Titus was illegally expelled from school without following any of the IDEA procedural protections for 7 months. By the time his mother sought legal assistance, he was suffering from severe depression and became increasingly suicidal. By the time he returned to school—a year after the illegal explulsion—he needed treatment for manic depression. Titus soon engaged in criminal activity and was convicted of a felony.

In prison, his teachers made the following statement to his lawyers: "Titus is always very cooperative. Why were his emotional and learning difficulties so poorly addressed in school.

Titus' antisocial behaviors are the direct result of the failure of the school system to provide him with a free appropriate public education to which he was entitled and the failure of the system to comply with the due process protections in the law.

How many more Titus' are we going to have under the Gorton amendment.

The Gorton amendment overturn a 7 to 2 Supreme Court decision interpreting the Individuals With Disabilities Education Act [IDEA] as a floor amendment to S. 1513, a bill reauthorizing the ESEA without hearings, discussion, and attempts to reach consensus among the concerned parties.

The amendment has been drafted without any meaningful understanding of the nature and magnitude of the problem of violence by children with disabilities. We simply do not have any data. In fact, what is known suggests that disabled children are most frequently the brunt of violence not the perpetrators.

This amendment will exacerbate tensions between parents and schools officials in a time when we should be doing everything in our power to facilitate partnerships and trust. This amendment is creating outrage, anger, fear, and bitterness in the souls of parents of children with disabilities across this country. Every day they live with the challenges of bringing up a child with a disability at home.

It is unacceptable to blame a child who acts out for what, in many instances, may be a lack of appropriate education and related services, the lack of appropriate behavior management techniques, and the lack of teacher training.

Next year we are going to reauthorize the Individuals With Disabilities Education Act. Current law may not be perfect and, in fact, we may need to make certain modifications. As chairman of the Subcommittee on Disability Policy I am committed to conducting a thorough review of the issue. Let's not act in a hasty fashion; let's do it right as part of the reauthorization of IDEA. Let's not fix one problem and create new ones because we did not take the time to fix it right.

Finally, this amendment should be opposed because it is divisive in an area where bipartisanship and consensus building is the norm. I have been the chairman of the Subcommittee on Disability Policy since the beginning of the 100th Congress.

When I took over the chairmanship from our former colleague, Lowell Weicker, he implored me to carry on the tradition of this subcommittee of seeking bipartisan consensus on matters before the subcommittee. I am pleased to report that over the past 7 years we have succeeded on reaching a bipartisan consensus on every provision of every bill. I believe that we succeed because we listen to and work with all concerned parties, including representatives of school boards, school administrators, teachers, parents, and the disability community.

I pledge to my colleagues that we will make the same effort to address the issue of disciplining children with disabilities as part of the reauthorization of IDEA, including a thorough review of the stay-put provision and, if considered necessary, amend this provision of the IDEA.

So I close by saying please, let us take care of the weapons. We can take care of the weapons in the Jeffords amendment. But let us not kick children with disabilities down one more time. These children are only asking for a fair chance. They are only asking that the schools follow the laws that we have put down, here in Congress, to provide them with a free appropriate public education. It has been 4 years since the adoption of the Americans

With Disabilities Act, Madam President. Let us not turn the clock back. Let us turn down the Gorton amendment and let us adopt the Jeffords amendment.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, is there a minute remaining?

The PRESIDING OFFICER. The Senator from Vermont has 1 minute.

Mr. JEFFORDS. I yield.

Mr. KENNEDY. Madam President, I thank both Senator JEFFORDS and Senator HARKIN for an excellent presentation. I hope the Senate will resist the Gorton amendment. We have taken the Dorgan amendment on guns. We have taken the Gorton amendment on violent students on record—we have taken a Gorton amendment about parental involvement and disciplinary actions, and we are overriding the IDEA with regard to guns. We have made every effort to try to respond to the problems of violence. I think the excellent presentation that has been made by the Senators from Vermont and Iowa should be the position that the Senate accepts on this amendment.

I hope the Senate will reject the Gorton amendment and support the Jeffords-Harkin amendment.

AMENDMENT NO. 2425, AS MODIFIED

Mr. JEFFORDS. Madam President, I ask unanimous consent to modify my amendment.

The PRESIDING OFFICER. Is there objection? Hearing none, the Senator may proceed.

Mr. JEFFORDS. The copy is at the desk.

I will read it. On page 3 of my amendment:

Strike lines 3–11 and insert in lieu thereof the following:

(b) Nothing in the Individuals With Disabilities Education Act shall supersede the provisions of the Gun-Free Schools Act (section1501 of the Elementary and Secondary Education Act) when the child's behavior is unrelated to his or her disability.

The PRESIDING OFFICER. The amendment is so modified.

The modification to amendment (No. 2425) is as follows:

On page 3 strike lines 3–11 and insert in lieu thereof the following:

(b) Nothing in the Individuals With Disabilities Education Act shall supersede the provisions of the Gun-Free Schools Act (section 1501 of the Elementary and Secondary Education Act) when the child's behavior is unrelated to his or her disability.

VOTE ON AMENDMENT NO. 2418

The PRESIDING OFFICER. All time having expired, the question occurs on amendment 2418 offered by the Senator from Washington, Senator GORTON.

The yeas and nays have been ordered.

The clerk will call the roll on the Gorton amendment.

The assistant legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced, yeas 60, nays 40, as follows:

[Rollcall Vote No. 239 Leg.]

YEAS—60

Baucus	Dodd	Mack
Bennett	Dole	McCain
Biden	Domenici	McConnell
Bond	Dorgan	Murkowski
Boren	Faircloth	Nickles
Breaux	Feinstein	Nunn
Brown	Ford	Pressler
Bryan	Gorton	Pryor
Bumpers	Gramm	Reid
Burns	Grassley	Robb
Byrd	Gregg	Roth
Campbell	Hatch	Sasser
Coats	Heflin	Shelby
Cochran	Helms	Simpson
Cohen	Hutchison	Smith
Conrad	Johnston	Specter
Coverdell	Kempthorne	Stevens
Craig	Lieberman	Thurmond
D'Amato	Lott	Wallop
Danforth	Lugar	Warner

NAYS—40

Akaka	Hollings	Mitchell
Bingaman	Inouye	Moseley-Braun
Boxer	Jeffords	Moynihan
Bradley	Kassebaum	Murray
Chafee	Kennedy	Packwood
Daschle	Kerrey	Pell
DeConcini	Kerry	Riegle
Durenberger	Kohl	Rockefeller
Exon	Lautenberg	Sarbanes
Feingold	Leahy	Simon
Glenn	Levin	Wellstone
Graham	Mathews	Wofford
Harkin	Metzenbaum	
Hatfield	Mikulski	

So, the amendment (No. 2418) was agreed to.

Mr. GORTON. Madam President, I move to reconsider the vote.

Mr. EXON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2425, AS MODIFIED

Mr. HARKIN. Madam President, I would like to enter into a colloquy with my colleague, Mr. JEFFORDS. It is my understanding that the provisions of the Senator's amendment are fully consistent with guidance provided by the U.S. Department of Education in a recent opinion on the application of the Gun-Free Schools Act to students covered under the Individuals with Disabilities Act?

Mr. JEFFORDS. The Senator is correct in his understanding.

Mr. HARKIN. I ask unanimous consent to have printed in the RECORD the U.S. Department of Education interpretation.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

GUIDANCE CONCERNING STATE AND LOCAL RESPONSIBILITIES UNDER THE GUN-FREE SCHOOLS ACT OF 1994

The Gun-Free Schools Act [Act] states that, as a condition of receiving any assistance under the Elementary and Secondary Education Act, local educational agencies [LEAs] must have in effect a policy requiring the expulsion from school for a period of not less than one year of any student who brings a firearm to school, except that the LEA's chief administering officer may modify the expulsion requirement on a case-by-case basis. Under this provision, an LEA would be permitted to discipline students with disabilities in accordance with the requirements of Part B of the Individuals with Disabilities Education Act [IDEA] and Section 504 of the Rehabilitation Act (Section 504), and thereby maintain eligibility for Federal financial assistance.

Question. When does the Gun-Free Schools Act take effect?

Answer. The requirements of the Gun-Free Schools Act took effect on March 31, 1994.

Question. What provisions must the revised policy contain?

Answer. The policy must require the expulsion from school for a period of not less than one year of any student who is determined to have brought a weapon to a school under the jurisdiction of the LEA. In order to comply with existing requirements of IDEA and Section 504 regarding discipline of students with disabilities, an LEA must include in its policy the exception that permits its chief administering officer to modify the expulsion requirement on a case-by-case basis.

Question. Do the requirements of the Gun-Free Schools Act conflict with requirements that apply to students with disabilities?

Answer. Compliance with the Gun-Free Schools Act may be achieved consistently with the requirements that apply to students with disabilities as long as discipline of such students is determined on a case-by-case basis in accordance with the disability laws. Students with disabilities may be expelled for behavior unrelated to their disabilities as long as the procedural safeguards required by IDEA and Section 504 are followed. IDEA also requires that educational services must continue, although they may be in another setting, for students with disabilities who are properly expelled.

If it is determined that the student's action in bringing a firearm to school is related to the student's disability, IDEA and Section 504 do not permit the LEA to expel the student. However, under IDEA and Section 504, a student with a disability may be suspended for up to ten days. LEAs may also seek a court order to remove a student who is considered to be dangerous. In addition, the child's may be changed in accordance with procedures under those laws to address concerns for the safety of that child and other children.

Question. Is an LEA required to expel any student who brings a firearm to school, without exception?

Answer. No. The Gun-Free Schools Act provides that the LEA's policy may allow its chief administering officer to modify the expulsion requirement for a student on a case-by-case basis. An LEA may comply with the requirements of IDEA and Section 504 under the provision for case-by-case modification.

Mr. HARKIN. I am also concerned about how the amendment is intended to apply to a child with a disability who does not understand the consequences of his or her behavior and for whom the current placement is the best possible place to teach the child about the danger of weapons and to deter the child for ever bringing firearms to school. If this child is removed from the current placement, the damage to the child could be lifelong without in any way increasing the safety of the other children. I don't want a school district to feel compelled to remove a disabled child who will not pose a future threat of weapons possession if properly monitored and educated in his current placement.

Mr. JEFFORDS. I agree. This amendment will give the local school district the ability to make case-by-case determinations based on the facts and circumstances of a particular case, consistent with the underlying purposes of IDEA. We do not want to punish children because of their disabilities if the public policy of increased safety is not furthered. This amendment allows appropriate action where the safety of other children is at stake.

The PRESIDING OFFICER. The question now occurs on agreeing to amendment No. 2425, as modified, and offered by the Senator from Vermont [Mr. JEFFORDS]. The yeas and nays have been ordered. The clerk will now call the roll.

The legislative clerk called the roll.

The result was announced—yeas 100, nays 0, as follows:

[Rollcall Vote No. 240 Leg.]

YEAS—100

Akaka	Feingold	McConnell
Baucus	Feinstein	Metzenbaum
Bennett	Ford	Mikulski
Biden	Glenn	Mitchell
Bingaman	Gorton	Moseley-Braun
Bond	Graham	Moynihan
Boren	Gramm	Murkowski
Boxer	Grassley	Murray
Bradley	Gregg	Nickles
Breaux	Harkin	Nunn
Brown	Hatch	Packwood
Bryan	Hatfield	Pell
Bumpers	Heflin	Pressler
Burns	Helms	Pryor
Byrd	Hollings	Reid
Campbell	Hutchison	Riegle
Chafee	Inouye	Robb
Coats	Jeffords	Rockefeller
Cochran	Johnston	Roth
Cohen	Kassebaum	Sarbanes
Conrad	Kempthorne	Sasser
Coverdell	Kennedy	Shelby
Craig	Kerrey	Simon
D'Amato	Kerry	Simpson
Danforth	Kohl	Smith
Daschle	Lautenberg	Specter
DeConcini	Leahy	Stevens
Dodd	Levin	Thurmond
Dole	Lieberman	Wallop
Domenici	Lott	Warner
Dorgan	Lugar	Wellstone
Durenberger	Mack	Wofford
Exon	Mathews	
Faircloth	McCain	

So the amendment (No. 2425), as modified, was agreed to.

Mr. MITCHELL. Madam President, I move to reconsider the vote.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

• Ms. MIKULSKI. Mr. President, I am pleased to offer my support for the reauthorization of the Elementary and Secondary Education Act. This legislation provides funding for all major Federal elementary and secondary programs. It is a good bill and an important one.

I especially like this reauthorization bill because, first, it improves the old chapter I program; second, it provides for more extensive teacher training; third, it also addresses school violence, and fourth, it contains gender equity provisions throughout.

First, Mr. President, I would like to commend the chairmen, Senator KENNEDY and Senator PELL, for their work on revamping the chapter I distribution formula, now title I, the largest federally funded education program for disadvantaged students in poor areas. I know it was not easy. It is a complicated formula and it is difficult to satisfy the needs of all States.

I know that in Maryland title I helps Maryland's disadvantaged students to get the education they need and deserve.

The Labor Committee's formula streamlines the title I Federal program into one formula and targets the money to more economically disadvantaged students. That is a step in the right direction.

Second, Mr. President, this bill expands the Eisenhower Teacher Training Program to include training in other core subjects. Yet, this bill still recognizes and emphasizes the original purpose of the Eisenhower program, to train teachers in math and science. I support professional development for our teachers because they are the backbone of our educational system. They must be up to speed on all subjects, especially math and science.

By age 13, the math and science achievement of American students lags behind that of students in other countries. Yet, if we are going to keep pace with the rest of the world in developing new technology, or students—and our teachers—will need strong math and science skills.

I have worked hard in my VA–HUD Appropriations Subcommittee to see that math and science education programs are funded because I know the importance of training all students for the future.

Third, this legislation expands the Drug Free Schools and Communities Act to encourage school safety programs. Title V of this bill provides funds for violence prevention programs in our schools, such as early intervention programs, counseling, mentoring and before and after school programs.

Mr. President, this is an extremely important section of this legislation because we must do everything we can to make every school in America free from drugs and violence.

I have seen the way that crime has infiltrated our schools and our community. In January of last year, I held a town meeting with students at Canton Middle School in Baltimore.

These assertive 12, 13, and 14 year olds were mainly concerned with one issue—crime. Mr. President, 12 year olds should be concerned about getting their homework done, not about running from gunfire on the playground or on their way home from school.

We cannot tolerate any more of what is happening on our streets and in our schools. We need to say yes to kids who say no to drugs and yes to homework. We need to make investments in our youth before the trouble begins.

Finally, to help create an environment more conducive to learning, I am especially pleased that this bill incorporates a package of bills introduced by myself and my colleagues on gender equity.

I, and my colleague, Senator HARKIN, have included language in this legislation to make sure that teachers are sensitive to the needs of all students. I know teachers do the best job they can. We want to be sure, however, that no student is overlooked and that all students are treated equally in the classroom—girls and boys. So, in this legislation teachers will also have access to professional development programs on gender equality training.

I added language to this bill to build on the concept of making our schools safe. The language I added suggests that schools make the elimination of sexual harassment and abuse a part of its mission to create a healthy school environment for girls and boys.

Let me give you one example of why this language is important. Last April, for example, in Montgomery county, MD, the county public schools and Montgomery County Commission for Women sponsored a hearing on sexual harassment in education.

Forty brave witnesses, including students, parents, and teachers, presented disturbing testimony about harassment between staff members, between staff and students, and peer harassment—among students.

One young girl said that instead of recognizing harassment as a problem, girls are usually taught how to handle it.

Fortunately, Montgomery County made a commitment to examine this issue and has designed a policy for handling harassment and procedures for responding to complaints.

But, other places are not so lucky. Training and education is needed so that our schools are safe and healthy environments for learning. An abusive environment is no place for students to learn. My goal is to make every classroom and every school in the United States conducive to learning for all students.

To that end, Mr. President, I would like to make one final point. I am a strong supporter of an initiative called Character Counts. This is an initiative to bring back some of the community building spirit that this country has lost. It encourages building individual capacity among our young people so that they can be a productive part of a larger community. I am proud to cosponsor the amendment offered by my colleagues, Senator DOMENICI and Senator DODD.

To me character education means trustworthiness, fairness, justice and caring, civic virtue and citizenship; those aspects of continuity that will help us to not only cope with change, but to embrace change, and lead us into the 21st century.

We need to advocate for a society based on virtue and value and not a society where every aspect of our cultural communication reward and exploits violence and vulgarity.

That is not what the United States is about, and that is not what built the United States of America. What built the United States of America was virtue and value, not violence and vulgarity.

People have known this for years. It is the habits of the heart that de Tocqueville spoke about. It is all about neighbors caring for neighbors, personal responsibility, personal respect for yourself and respect for others. It is about social responsibility, the desire to be part of a neighborhood, a community, and to truly be a citizen of the United States of America.

So I am happy to lend my voice and my efforts to this cause that I believe transcends party and geographic lines. I am happy to be a part of this coalition.

Finally, Mr. President, I have only mentioned a few of the good things in this bill. It improves teacher training, enhances school violence prevention programs, and increases the awareness of gender equity concerns. But, most importantly, it reauthorizes secondary education programs through 1999 intended to help the poorest students.

The education of our youth is an investment we cannot afford to overlook. It is what is best for our children and our future. I am pleased to support this legislation and I look forward to its passage.●

AMENDMENT NO. 2423

The PRESIDING OFFICER. The question now recurs on the Simon Amendment No. 2423.

The majority leader.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Madam President, I ask unanimous consent that upon disposition of the Simon amendment Senator BUMPERS be recognized to offer his formula change amendment; that there be a time limitation of 2 hours for debate on that amendment, equally divided and controlled in the usual form, with no amendments in order, nor to any language which may be stricken; and that at 9 p.m. the Senate vote on or in relation to the Bumpers amendment.

Mr. BYRD. Madam President, reserving the right to object, and I hope I will not, I have two amendments which will be accepted, but I have a few things I want to say about them. If we are still going to be on the bill tomorrow, I will be happy to wait until tomorrow.

Mr. MITCHELL. Madam President, if I might inquire through the Chair of the Senator from West Virginia, the Senator says he has something to say about them. How long does the Senator intend to take on the two amendments which will be accepted, I understand?

Mr. KENNEDY. Yes.

Mr. MITCHELL. How long would the Senator like?

Mr. BYRD. I think what I would have to say might be between 20 and 30 minutes, even though the amendments are going to be accepted.

Mr. MITCHELL. Would it be agreeable to the Senator to have his amendments accepted and make his statements immediately after the vote on the Bumpers amendment this evening?

Mr. BYRD. No. I do not want to be contrary, I say to the distinguished majority leader, but nobody will be listening then, and they may not be listening now, but at least they will not be home.

Mr. MITCHELL. We are going to be in session after the Bumpers vote so there will be as many Senators listening then as now.

Mr. BYRD. Mr. President, I do not want to wait until 9 o'clock to put in my amendments.

Mr. MITCHELL. Of course, we have a large number of Senators we are trying to accommodate here, as I know the distinguished chairman is aware, having done it many times himself.

Mr. BYRD. Why do not we do this if it will be agreeable to all sides, including Mr. BUMPERS: Give me 20 minutes. If the majority leader could work that into his request, that following the acceptance of the amendment by Mr. SIMON that I have 20 minutes on two amendments.

Mr. MITCHELL. Madam President, I then modify my request so that following the disposition of the Simon amendment, Senator BYRD be recognized for 20 minutes to offer two amendments, which I am advised by all concerned will be accepted; that following the disposition of those amendments, which will then be approximately 7:15 Senator BUMPERS be recognized, and that the rest of the agreement remain as stated except that the vote on or in relation to the Bumpers amendment occur at 9:15 p.m.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. MITCHELL. I thank our colleagues for their cooperation.

Mr. BUMPERS. May I ask what just happened?

Mr. MITCHELL. Senator BUMPERS will be recognized to offer an amendment at approximately 7:15; that we have 2 hours equally divided and have a vote on or in relation to Senator BUMPERS' amendment at 9:15 this evening.

Mr. BUMPERS. What about me between then?

Mr. MITCHELL. The Simon amendment will be accepted and Senator BYRD will offer two amendments which will be accepted.

Mr. BYRD. Madam President, if the distinguished majority leader will yield, I have a feeling of remorse.

The distinguished majority leader has bent over backward, and so has the manager and ranking manager, to accommodate me. I want to accommodate them.

I will offer my amendments immediately after the disposition of the Simon amendment. My amendments will be accepted. And I will do as the distinguished majority leader suggested. Sometime this evening I will make my eloquent remarks and just ask unanimous consent that they be inserted in the RECORD prior to the vote on my amendments.

Mr. MITCHELL. That is very thoughtful. But since we have reached this agreement, rather than reopening it, which would take more time, I suggest the Senator go ahead and, frankly, from the standpoint of several Senators who want to attend a function, a few more minutes might well be beneficial to them.

So if it is agreeable to Senators, we have the agreement, I think it is best that we now execute the agreement rather than spending time talking about the agreement.

Mr. BUMPERS. Should by some miracle of miracles these amendments be adopted and accepted prior to 7:15, would I be free to offer my amendment then?

Mr. MITCHELL. Yes, the Senator would be. The agreement does not specify the time. I estimated the time based upon what Senator BYRD indicated he would require.

And we are going to continue. We are hoping to get a finite list of amendments to this bill and continue thereafter in an effort to make further good progress on this bill.

I thank my colleagues for their cooperation.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 2423, AS MODIFIED

Mr. SIMON. Madam President, I submit a revision of my amendment.

The PRESIDING OFFICER. The Senator does have a right to modify his amendment, and the amendment is so modified.

So the amendment (No. 2423) was modified, as follows:

Insert on p. 1030 and renumber accordingly:

"PART O—LONGER SCHOOL YEAR

"SEC. 13401. SHORT TITLE.

"This part may be cited as the 'Longer School Year Incentive Act of 1994'.

"SEC. 13402. FINDINGS.

"The Congress finds as follows:

"(1) A competitive world economy requires that students in the United States receive education and training that is at least as rigorous and high-quality as the education and training received by students in competitor countries.

"(2) Despite our Nation's transformation from a farm-based economy to one based on manufacturing and services, the school year is still based on the summer needs of an agrarian economy.

"(3) For most students in the United States, the school year is 180 days long. In Japan students go to school 243 days per

year, in Germany students go to school 240 days per year, in Austria students go to school 216 days per year, in Denmark students go to school 200 days per year, and in Switzerland students go to school 195 days per year.

"(4) In the final four years of schooling, students in schools in the United States spend a total of 1,460 hours on core academic subjects, less than half of the 3,528 hours so spent in Germany, the 3,280 hours so spent in France, and the 3,170 hours so spent in Japan.

"(5) American students' lack of formal schooling is not counterbalanced with more homework. The opposite is true, as half of all European students report spending at least two hours on homework per day, compared to only 29 percent of American students. Twenty-two percent of American students watch five or more hours of television per day, while less than eight percent of European students watch that much television.

"(6) More than half of teachers surveyed in the United States cite 'children who are left on their own after school' as a major problem.

"(7) Over the summer months, disadvantaged students not only fail to advance academically, but many forget much of what such students had learned during the previous school year.

"(8) Funding constraints as well as the strong pull of tradition have made extending the school year difficult for most States and school districts.

"(9) Experiments with extended and multitrack school years have been associated with both increased learning and more efficient use of school facilities.

"SEC. 13403. PURPOSE.

"It is the purpose of this part to allow the Secretary to provide financial incentives and assistance to States or local educational agencies to enable such States or agencies to substantially increase the amount of time that students spend participating in quality academic programs, and to promote flexibility in school scheduling.

"SEC. 13404. PROGRAM AUTHORIZED.

"The Secretary is authorized to award grants to States or local educational agencies to enable such States or agencies to support public school improvement efforts that include the expansion of time devoted to core academic subjects and the extension of the school year to not less than 210 days.

"SEC. 13405. APPLICATION.

"Any State or local educational agency desiring assistance under this part shall submit to the Secretary an application at such time, in such manner, and accompanied by such information as the Secretary may require.

Authorization: For the purpose of carrying out this part there are authorized to be appropriated $100,000,000 for fiscal year 1995 and such sums as may be necessary for each of the succeeding fiscal years.

Mr. SIMON. Madam President, that is the amendment that we discussed at some length earlier encouraging the lengthening of the school year by local school districts. There was a question about where the funding was coming from. That was the matter of controversy that has now been worked out.

I believe there is no opposition to this amendment now.

The PRESIDING OFFICER. Is there any further debate on the Simon amendment?

The Senator from West Virginia.

Mr. BYRD. May I inquire of the distinguished Senator from Illinois as to whether or not I am a cosponsor.

Mr. SIMON. Let me assure that Senator BYRD is a cosponsor, along with Senator PELL, Senator CHAFEE, and Senator KOHL.

Mr. BYRD. I thank the Senator.

Madam President, I am pleased to cosponsor the amendment offered by Senator SIMON to provide financial incentives to States or local education agencies to increase the amount of time that students spend in the classroom.

States and local school systems are experiencing some very tough financial times, and, of course, it costs money to extend the school year or the school day. However, it will cost us much more as a nation if we continue to shortchange both our students and our teachers by not encouraging them to increase the amount of time that they spend together in the classroom.

I have long been an outspoken advocate for the pursuit of excellence. I have long believed that learning is a lifelong process. Therefore, it has long been a mystery to me how we can expect our children to excel when increasingly they spend so little time on core academic subjects.

According to the report "Prisoners of Time" issued by the National Education Commission on Time and Learning, American students spend, on average 180 days in school. The traditional school day is about 5.6 hours of classroom time. Further, the report pointed out that while the school day was originally designed for the core subjects, in actual fact, today, only about 3 hours of each day is spent on core subjects. The remainder of the day is spent in other activities, such as drivers' training, homeroom, study halls, lunch, and pep rallies. In short, the Commission's report found that our educational system is hampered by the clock, and as such is not addressing the needs of the students, the teachers, the community, or the Nation.

We are in an age in which scientific, technological, and mathematical abilities are critical for maximum national economic progress and international competitiveness. This Nation must have engineers, mathematicians, and scientists to keep us on the cutting edge of emerging technologies. We must also have scholars who understand the workings of government and the lessons of history. Clearly, our schools are not doing the job that they must do if we are to run first in the global economic race. There are too many distractions in our schools. More time must be given to serious students who want to learn and to serious teachers determined to teach. The Japanese school year is 243 days long, and we can readily see the evidence of the benefits of that longer school year in the academic performance of Japanese students.

The German school year is 240 days long. Shouldn't we be getting a message here? Our kids go to school only 180 days and only about half of those days are spent in serious study.

That is roughly 60 days a year spent on core studies. No wonder our students are falling behind. We have been talking about the need to do something to improve the quality of education in our schools for some time, but talking has gotten us nowhere.

How can we expect teachers to teach and children to learn when the average amount of time in a school day allotted to serious study is just 3 short hours?

The minds of our young people are being wasted. American kids seem to be majoring in television, soap operas, hard rock, videos, and horror movies, rather than algebra, science, or history.

We must get back to basics. The basics of reading, writing, and arithmetic need to be skills that are mastered early. Without the basics, students cannot even begin to master the more difficult skills that will be required in order for them to be productive members of society and to have any hope of a successful life.

Educators and parents alike are finally starting to understand the urgent need to improve the quality of our education system. Quality cannot be achieved when only 3 hours per day are devoted to learning the basics. This amendment will provide assistance to States and local school systems which want to try to improve the quality of their education efforts by extending the school day or the school year. This is a good amendment, and I urge its adoption. Let us spend more time on learning in our public schools before the time runs out for our children and for the Nation.

The PRESIDING OFFICER. Is there further debate?

The Senator from Massachusetts.

Mr. KENNEDY. Madam President, just for 1 minute. This idea makes a great deal of sense, and we want to work very closely with the Senator from Illinois and also the Senator from Rhode Island, [Mr. PELL] who has talked about this for many, many years.

Senator FEINGOLD, I think, had some questions about the earlier kind of amendment, and I expressed that to the Senator from Illinois.

I would hope that we will move ahead and accept this amendment. If for some reason those concerns have not been allayed, and I believe they have, but if they have not, then I will come back to the Senator from Illinois and ask for at least an opportunity for him to be heard and his concerns be addressed later during the night.

I thank the Senator.

Mr. JEFFORDS. Madam President, I would like to also say that I have no objection to the Senator's amendment,

on one condition that he will make me a cosponsor.

Mr. SIMON. Madam President, I ask unanimous consent that the Senator from Vermont [Mr. JEFFORDS] and the Senator from Illinois [Ms. MOSELEY-BRAUN] also be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Vermont and the junior Senator from Illinois are added as cosponsors.

Is there any further debate on this amendment?

Observing none, the question is on agreeing to the amendment.

The amendment (No. 2423), as modified, was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote.

Mr. SIMON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. REID). Under the unanimous-consent agreement, the Chair now recognizes the Senator from West Virginia.

PIECES OF HUMAN CLAY

Mr. BYRD. I thank the Chair. Mr. President, I do not pretend to be a pedagogical expert, skilled educator, or a psychologist. However, I am a lifelong student, a man who loves the challenge of acquiring new knowledge, and I am a parent and grandparent, dedicated to bequeathing to the rising generation of Americans as much of our cultural, scientific, creative, and artistic heritage as one generation can pass on to another.

Further, I am frankly alarmed that, in this age of television, affluence, and mass culture, many of our youth appear to be less competent in absorbing their heritage than their counterparts in prior generations were, and that, worse, American public school children are chronically ranking far below their contemporaries in many European and Asian societies in their mastery of academic subject after subject.

Unless we call a halt to mediocrity in our school systems, unless we draw a decisive line in the educational sand now, and unless we demand concrete results and discernable improvement in the performance and achievement of our public educational systems, Mr. President, I fear for the future of our country, for the quality of life of the next generation of Americans, and, indeed, for the economic and political position of the United States in the fast approaching 21st century.

Throughout the history of America, millions of our forefathers and mothers rested secure in a faith that America was providentially destined. They believed, as the Romans did, that their country was providentially destined for success as a nation and as a society—that, like unto the Israelites of the Old Testament, our immigrant ancestors had left foreign shores to plant new seeds and harvest abundant crops in this Promised Land. Indeed, taking their cues from that Old Testament, many of our ancestors believed that America, like the Chosen People of the Old Testament, enjoyed a sacred Covenant with Providence that guaranteed America's ongoing triumph, no matter the odds against them.

Unfortunately, Mr. President, like the "cows of Bashan" mentioned in the Old Testament that took their ease in luxury and rested on their assumed privileged status, too many recent Americans appear to have forgotten that not only did our ancestors have faith in their destinies, but they also worked to guarantee the quality of those destinies for themselves and for their posterity.

And in too many of our schools, students whose progenitors sacrificed, struggled, and suffered to win the privilege of obtaining the opportunity of getting a formal education—too many of these students today resent having to learn to read, having to learn mathematics, having to study science, having to learn to write, having to study history, and even having to go to school.

Conversely, in country after country overseas, the future rivals of today's American school children hold their opportunities to be educated as a priceless heritage—indeed, the keys to their futures.

Frankly, Mr. President, I am frustrated and angry that we have poured so many billions upon billions of dollars over the past half century into our schools systems, only to reap apparently lower and lower returns on those investments.

I can remember the days, when I was in the House of Representatives, when there was great opposition to Federal aid to schools. It was a great issue in the country, a great issue in the Congress. But finally we decided we would march down that road. As I say, we have poured billions into education, and we are not seeing the results that were hoped for.

I do not pretend to know exactly all that is wrong with American public education.

If to do were as easy as to know what were good to do, chapels had been churches, and poor men's cottages princes' palaces. It is a good divine that follows his own instructions: I can easier teach twenty what were good to be done, than be one of the 20 to follow mine own teaching.

But I want to share some of my perceptions and to explain my reasons for hoping that in the educational proposals contained within the legislation that we are considering now, perhaps something at last might be achieved to guarantee that the rising generation of American school children might reap some of the educational dividends and results that will be necessary for the survival in the international competition that, I guarantee, they will be facing in the years 2010, 2025, 2040, and beyond.

I think this legislation has been greatly improved by some of the amendments that have been offered and carried here, among which are the amendments by Mr. SIMON, Mr. JEFFORDS, Mr. GORTON, and others.

But I guarantee that in the decades to come, our children will be facing international competition that will curl their hair if they are unprepared to meet that competition.

There are many events in the womb of time that will be delivered.

And so, our young people need to be prepared.

Some generations ago, schools—and I can remember starting school in a two-room schoolhouse. Some generations ago, before my time, schools were for the privileged—largely the sons and daughters of the nobility, the wealthy merchant classes, and the professionals, both here and in Western Europe.

Indeed, until relatively recently, reading, writing, science, and the arts were the domain of cultural, economic, and political elites.

But the Calvinist fathers of New England, and prescient elders in other communities across a growing America, wrestled with the complacent and the selfish—the penurious and the shortsighted—to open up educational opportunities for more and more American children, regardless of the material circumstances of their families or the ethnic distinctiveness of their backgrounds.

That was the impetus for public education in America—the desire to put all children on an equal footing as each boy and girl began his or her pilgrimage into maturity—for the good of the entire community and for the success of the whole country.

Thus, children whose grandparents might have tended pigs—whose grandparents might have tended pigs for counts and landgrafs in Bavaria, or harvested grain for wealthy land owning gentry in the north of England—neither with any hope of advancement in society—those children, your parents, your forefathers and mine, learned, and trained, and disciplined themselves to become doctors and lawyers, scientists, and bankers, and even Senators and Presidents in this new country.

Such achievements did not come without pains. But the men and women who exercised their privilege of going to school at public and community expense raised the United States of America to the pinnacle of world power, economic dominance, and material wealth.

But somewhere along the line—there is an old song, I used to play it on the

stringed instrument, "Somewhere Along the Line"—somewhere along the line, learning for the sake of learning seems to have lost its appeal to certain pedagogues.

Solon, who was one of those seven wise men of Greece, Solon the Lawgiver said, "I grow old in the pursuit of learning."

Was it the siren writings of Jean Jacques Rousseau, who championed the theory of human perfectability through schooling and coddling? Was it John Dewey and John Dewey's apparently overenthusiastic disciples who sought to create a new religion and to educate out of children any supposed propensities to such archaic notions as "sin" and "depravity" by substituting psychological tinkering for mastery of subjects and disciplined learning?

Whatever its etiology, in the lifetimes of many here, schools that once taught rigor and excellence have been reduced to teaching children to "feel good about themselves." In order not to assault tender young psyches, challenging textbooks featuring classic literature and increasingly sophisticated scholarship have been cast aside in behalf of sophomoric textbooks filled with pictures—not narrative, but pictures; we all like to look at pictures—"dumping down," the process is called—that depend too often on vulgar dialogue, "street talk," slang, and even pornographic plots, all in the name of "realism," "holding the students' interest," or "preparing the kids for the real world." It is silly.

Mr. President, civilization is a fragile treasure. the crumbling pyramids and collapsed temples of Ancient Egypt, the vine-smothered palaces and courts of the Yucatan, and the toppled pillars of Imperial Rome demonstrate how easily and how carelessly one or two generations of a culture can forever—forever lose and forfeit even the most elevated society.

My hope is the educational reforms that we are considering in the legislation before us today is that just perhaps—just perhaps—we are not too tardy in setting America's educational system right before we, too, follow Ancient Egypt, the Mayans, and the Ancient Romans down the path of national decline and cultural suicide.

My hope in the educational reforms in the legislation that we are considering is that, once again—once again, we might offer American school children textbooks that bristle—bristle—bristle with challenge, that provide insights and facts and truths that will wake up young minds to the magnitude of learning, that will chart the way to higher and higher study and deeper and deeper engagement with the mysteries of scholarship and research.

Further, I want an end to the violence that is increasingly besetting schools across this country.

No child who carries knives, pistols, and other weapons to school for the purpose of intimidating or bullying his fellow students, or for wreaking revenge on another student for some imagined slight or insult, or for punishing a girl friend for turning him down for a date—no student who brings weapons to school—deserves an education at taxpayer expense.

Like churches, synagogues, and other places of worship, schools should be sacred precincts—"temples for the mind"—in which Truth is supreme and those who seek truth are free to learn, search, and expand their minds, without fear and without anxiety for their very lives.

Hoodlums have turned some of America's schools into terror camps, with teachers living in fear for their lives and innocent children—innocent children becoming casualties in scholastic "free fire" zones.

Mr. President, I feel for the poor teachers who have to stand in today's classrooms and quake in fear that some hoodlums in the room are going to maim or assault and batter, or even kill, perhaps. How can one teach in such an atmosphere? How can students learn in such an atmosphere? Most of our students in the schools are wholesome, fine students. Most of them are there to learn.

We hear too little about the students who are in the laboratories and in the libraries. Most of them are striving for excellence. But in such an atmosphere, they must be on nerve's edge, they must be cowered from fear of the bullies who might beat and batter them.

Mr. President, in the legislation before us, we, in the name of the American people, are laying down the ultimatum: Either students leave their weapons at home and come to school to learn or they do not come to school at all.

In this legislation, in large measure, we are struggling for America's future. We are struggling in the hope that America will, indeed, have a future. The most basic lesson that history teaches is that unless each generation is initiated into the truths that every past generation has learned, a civilization cannot expect to survive.

Our schools are the kilns of our future. The hour is late, the rot is far advanced, ignorance is winning new battles for the minds and souls of children across our country. The Rubicon is before us.

For the sake of our children, for the sake of our culture, for the sake of the continued promise of America, let us give American education the therapy that it requires before a new Dark Age descends further on our schools, and generations of men yet unborn some day wander among our cities, great monuments and university ruins, musing at the people who once lived in these skyscrapers and asking why America fell.

Mr. President,

I took a piece of plastic clay
And idly fashioned it one day
And as my fingers pressed it still
It moved and yielded to my will.
I came again when days were past,
The bit of clay was hard at last.
The form I gave it, it still bore,
And I could change that form no more.

I took a piece of living clay
And gently formed it day by day.
And molded with my power and art
A young child's soft and yielding heart.
I came again when years were gone,
He was a man I looked upon.
He still that early impress wore,
And I could change him nevermore.

That is what we are talking about: pieces of human clay.

Mr. President, I have only a few minutes remaining. I have two amendments which I shall offer—they are to be accepted—if I can briefly explain them.

One of the amendments would require that "the Secretary shall collect data to determine the frequency, seriousness, and incidence of violence in elementary and secondary schools in the States. The Secretary shall collect the data using, wherever appropriate, data submitted by the States pursuant to subsection (b)(2)(B)."

The amendment would require that "Not later than January 1, 1998, the Secretary shall submit to the Congress a report on the data collected under this subsection, together with such recommendations as the Secretary determines appropriate, including the estimated costs for implementing any recommendation."

Mr. President, we really do not have the data on which to base legislation and chart our course. As we look to the future, as we look to future legislative actions, we need data on what is occurring in our schools. We need the kind of information that the Secretary would acquire to conduct an evaluation of the national impact of programs that are assisted under title V of this bill. The amendment would expand the evaluation to include all other recent and new initiatives to combat violence in schools. We cannot afford to continue programs that are not working. At the same time, if programs are having a significant effect on reducing school-related violence, we need to know that, too, so that we can build upon their success.

And to continue to effectively assess the problem of violence in schools and determine the scope of the problem, this amendment would require, as I say, the Secretary to collect data to determine the frequency, the seriousness and the incidence of violence in the elementary and secondary schools.

The last major study of violence in schools was the former National Institute of Education's Violent Schools/Safe Schools Study commissioned by Congress and issued in 1978.

The other amendment provides that "No funds shall be made available

under this act to any local educational agency unless such agency has a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school served by such agency."

And "For the purpose of the section, the terms 'firearm' and 'school' have the same meaning given to such terms in section 921(a) of title 18, United States Code."

This is a serious problem that the amendment is attempting to address, the problem of guns and other weapons appearing in the classrooms and hallways of our Nation's schools. The amendment would require every local educational agency to establish policy requiring school officials to refer to the criminal justice or juvenile delinquency system any student who brings a firearm to school. Possession of a weapon on school property is a crime, and when a crime occurs, the police ought to be notified.

Unfortunately, Joseph Maddox, Chief of Police for the Penn Township Police Department noted in the winter 1994 edition of School Safety Magazine:

> Often when crimes occur at school, the decision is made to address the problem by means of school discipline, as opposed to dealing with the criminal justice system.

School discipline is fine, but it is simply not enough. Every thinking American should be outraged by the guns in our schools. And even if the police choose not to make a report or decline to submit the case for prosecution because of the nature of the offense, the police should, nevertheless, be notified.

Individuals who bring dangerous weapons to schools are committing a crime and they ought to be dealt with by our juvenile or criminal justice system. To do anything less is to send a message of tolerance for breaking the law and of a less-than-serious attitude about the safety of other students. This type of odious behavior cannot be tolerated, and we, in this Chamber, have an obligation to do something to ensure that it is not tolerated. We must get the guns out of our schools, and while we are about it, we must also get the individuals that bring the guns out as well. My amendments would help to accomplish both goals.

So let us think about preserving the good apples in the barrel, not just about preventing further spoilage of the bad ones.

Mr. President, one of the most important things we can provide to our young people—those who will soon take up the reins of leadership in our country—is the ability to obtain an education. We owe our young people that. We owe them the chance to learn in a school free from guns and free from violence. We owe our teachers relief from the fear of being shot while they are simply trying to teach a class.

We have come to a sad state of affairs when metal detectors have to be installed at the schoolhouse door. Let us end this climate of violence in our schools by ending the tolerance for lawbreaking students. Let the police deal with these youthful criminals so that our teachers and the good students in our schools do not have to.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, as if in executive session, I ask unanimous consent that at 9 a.m. on Friday, July 29, the Senate proceed to executive session to consider the nomination of Stephen Breyer to be an Associate Justice of the Supreme Court; that there be 6 hours for debate to be equally divided between the chairman and ranking member of the Judiciary Committee or their designees; that following the using or yielding back of time, the Senate vote, without any intervening action, on the nomination; that if confirmed, the motion to reconsider be tabled, and the President be immediately notified of the Senate's action; and the Senate return to legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. JEFFORDS. Reserving the right to object, I just say it has been cleared on our side of the aisle and we have no objection to the request.

I withdraw the reservation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, although not included in the agreement, I wish to state my intention that when the Senate votes on the Breyer nomination tomorrow, it will be the last vote of the day.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I would just like to indicate that I hope the Senate will accept the Byrd amendments. The first amendment requires, as the Senator has pointed out, the collection of data on school violence in elementary and secondary schools and submitting a report to Congress by January 1998.

The second one requires the LEA's to refer to criminal justice or juvenile authority any student who brings a gun to school.

Let me just mention, I hope both amendments will be accepted.

I will take 1 minute of time.

We have in my own State in Lawrence, MA, an enormously interesting program that has been stimulated by the district attorney where they work with the school officials, the youth service, the educators and the social service agencies and have prioritized and ranked the juveniles who are the most threatening and have been the repeaters in terms of violence.

They have accelerated the attention for those who have been the most violent and also have worked with those to free some of them from various gangs and gang activities.

It has had a profound effect and impact on stability in the school and also in terms of incidence of violence within the community.

So this kind of amendment will, one, give information, so if others want to develop not just community policing, this is really a community sort of prosecution, and it has been well accepted and appreciated by all the different community leaders there.

I think the kind of amendment that the Senator has offered can help and assist in getting that kind of information and that kind of awareness for other communities across the country.

So, Mr. President, I urge adoption of the amendment.

The PRESIDING OFFICER. The amendments have not yet been sent to the desk.

Mr. JEFFORDS. Mr. President, I also would like to join in commending the senior Senator from West Virginia for not only the excellent amendment but the excellent discussion on the problem of education. I agree with him wholeheartedly that before we act we must have the information and data necessary to do that. This will help us in that quest.

AMENDMENT NO. 2426

(Purpose: To direct the Secretary to collect data on violence in elementary and secondary schools)

AMENDMENT NO. 2427

(Purpose: To provide that no funds shall be made available under the Elementary and Secondary Education Act of 1965 to any local educational agency unless such agency has a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school served by such agency)

Mr. BYRD. Mr. President, I thank both managers. Inasmuch as they have expressed a willingness to accept the amendments, I send the amendments to the desk. I ask unanimous consent that they be considered en bloc, agreed to en bloc, and that the motions to reconsider be laid on the table en bloc.

The PRESIDING OFFICER. Is there objection to the unanimous consent request?

The clerk will report the amendments.

The assistant legislative clerk read as follows:

> The Senator from West Virginia [Mr. BYRD] proposes amendments numbered 2426 and 2427.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT NO. 2426

On page 874, line 9, strike "The State" and insert "(1) BIENNIAL EVALUATION.—The Secretary", and indent appropriately.

On page 874, line 14, insert after "subpart" the following: "and of other recent and new initiatives to combat violence in schools".

On page 874, between lines 16 and 17, insert the following:

"(A) Collection.—The Secretary shall collect data to determine the frequency, seriousness, and incidence of violence in elementary and secondary schools in the States. The Secretary shall collect the data using, wherever appropriate data submitted by the States pursuant to subsection (b)(2)(B).

"(B) Report.—Not later than January 1, 1998, the Secretary shall submit to the Congress a report on the data collected under this subsection, together with such recommendations as the Secretary determines appropriate, including estimated costs for implementing any recommendation.

AMENDMENT NO. 2427

On page 1165, between lines 21 and 22, insert the following:

"SEC. 10607. POLICY REGARDING CRIMINAL JUSTICE SYSTEM REFERRAL.

"(a) In General.—No funds shall be made available under this Act to any local educational agency unless such agency has a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school served by such agency.

"(b) Definitions.—For the purpose of this section, the terms 'firearm' and 'school' have the same meaning given to such terms by section 921(a) of title 18, United States Code.

The PRESIDING OFFICER. Without objection, the amendments are agreed to pursuant to the unanimous consent request.

So the amendments (No. 2426 and 2427) were agreed to.

AMENDMENT NO. 2428

(Purpose: To amend the title I formula)

The PRESIDING OFFICER. Under the unanimous-consent agreement, the Senator from Arkansas is now recognized. Under the unanimous-consent agreement, each side will have approximately 51 minutes.

Mr. BUMPERS. Mr. President, I ask unanimous-consent that the unanimous consent agreement as to the time on this amendment be vitiated and that the time of the vote be set at 9:30.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. With the understanding the time be evenly divided.

Mr. BUMPERS. Evenly divided.

Mr. KENNEDY. Reserving the right—

Mr. BUMPERS. The unanimous consent agreement was 9:15.

Mr. KENNEDY. If the Senator would start. As I understand it, we are checking this with the majority leader. I will not object to it, but why not start in. I am informed that it is agreeable.

The PRESIDING OFFICER. Hearing no objection, that is the order. The vote on this matter will occur at 9:30. The time remaining will be divided in the usual form between the Senator from Arkansas and the managers of the bill.

Mr. BUMPERS. Mr. President, on behalf of Senator COCHRAN and myself, I send an amendment to the desk and also announce as cosponsors Senators KEMPTHORNE, PRYOR, WALLOP, SHELBY, CRAIG, GRAMM, LOTT, BINGAMAN, THURMOND, BURNS, and HUTCHISON.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS], for himself, Mr. COCHRAN, Mr. KEMPTHORNE, Mr. PRYOR, Mr. WALLOP, Mr. SHELBY, Mr. CRAIG, Mr. GRAMM, Mr. LOTT, Mr. BINGAMAN, Mr. BURNS, Mr. THURMOND, and Mrs. HUTCHISON, proposes an amendment numbered 2428.

Mr. BUMPERS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 553, line 10, strike "(i)".

On page 553, line 15, beginning with "effort factor" strike all through the period on page 553, line 17, and insert "relative income per child factor described in subparagraph (B).".

On page 554, beginning with line 4, strike all through page 556, line 15.

On page 556, line 23, strike "product of the effort" and insert "income per school-age child".

On page 556, beginning with line 24, strike "under" and all that follows through "year" on page 557, line 2.

On page 557, between lines 9 and 10, insert the following:

"(C)(i) Except as provided in subparagraph (D), the relative income per child factor shall be determined in accordance with the following formula:

$$R = 1.0 - 0.4\left(\frac{c}{n}\right)$$

"(ii) For the purpose of the formula described in clause (i), the term 'c' shall be a fraction, the numerator of which is the 3-year average of total personal income as reported by the Bureau of Economic Analysis for a county, and the denominator of which is the amount determined under the second sentence of subparagraph (A) for the county multiplied by the number of children aged 5 through 17 in the county.

"(iii) For the purpose of the formula described in clause (i), the term 'n' shall be a fraction, the numerator of which is the sum of the 3-year averages of total personal income as reported by the Bureau of Economic Analysis for all counties in all States, and the denominator of which is the sum of the products of the amount determined under the second sentence of subparagraph (A) for each county in each State multiplied by the number of children aged 5 through 17 in such county.

"(iv) For the purpose of the formula described in clause (i), the term 'R' shall be not more than 0.8 and not less than 0.2.

"(D) The relative income per child factor for the Commonwealth of Puerto Rico shall be 0.6.

"(E) The Secretary shall use the most recent data available to the Secretary to calculate relative income per child factors under this paragraph.

Mr. BUMPERS. Mr. President, yesterday, Senator COCHRAN and I sent out a "Dear Colleague" letter, which quoted the committee report on this bill. The committee said:

S. 1513 admits "the most urgent need for education improvement is in schools with high concentrations of children from low-income families."

And yet the committee formula on a program initiated during the Lyndon Johnson administration about 30 years ago to bring children who live below the poverty line up to mainstream standards in our public schools achieves almost the opposite result. It is one of the most perverse formulas I have ever seen. I have been a devoted fan of title I since I served on the school board in Charleston, AR. And, while I was Governor of Arkansas, I depended heavily on money we received from the Federal Government under title I, that was allocated to the States to help educate poor children.

And now, Mr. President, the committee proposes a formula to distribute over $7 billion to the States of this Nation. Let me give you an illustration of what it does. Remember, poverty is in the poor States. I invite my colleagues to look at the map behind my distinguished colleague from Mississippi, Mr. COCHRAN. Everything black on that map is where the deepest poverty in the Nation is. That is where the most poor children live.

I have a parochial interest because my State is one of the poorest States in the Nation. But, Mr. President, the chart lists the 10 poorest States in America.

Look at it. Alabama, 23 percent poverty, and under the committee bill they receive $710 per poor child. Senator COCHRAN and I would give them $63 more per child. Compare poor Alabama with Delaware, which has 11 percent poverty, less than half of Alabama, and they get $1,185—40 percent more than Alabama—per child.

Here is my beloved Arkansas, and 24 percent of the children in my State live below the poverty line. They receive, under the committee bill, $704 per child. But Maine, for example, with 13 percent poverty, gets $972 per child—$268 per child more than our poor State with 24 percent of our children living in poverty.

Arizona, Kentucky, Louisiana, Mississippi, New Mexico, South Carolina, Texas, and the only State among the 10 poorest States of America that even makes it out of the $700 category in the committee proposal is West Virginia. Compare that with the home State of the chairman of the committee, our good friend, the manager of this bill, Massachusetts, which has 13 percent poverty, and they get $1,023 per poor child.

I live in one of the wealthiest counties in the State of Maryland, and Maryland has 11 percent poor children, and they get $1,033 per child, well over $300 per child more than my State receives, more than Mississippi and Alabama and Georgia and all those States, where these deep pockets of poor children reside.

Wisconsin, 14 percent poor children. They get $1,023. I could go on with all these States that are affluent.

Mr. President, this amendment is not something I just conjured up in the middle of the night. This amendment tracks precisely what the General Accounting Office said was wrong with this bill.

Let me repeat that. This is not just a brainstorm that Senator COCHRAN and I had. This is what the General Accounting Office said, in analyzing the committee bill, was wrong with the bill.

We put a lot of stock around here in what the General Accounting Office says. Senator COCHRAN and Senator BINGAMAN wrote to the General Accounting Office and asked for their analysis. This is not one of those full-blown investigative reports. This is just an analysis.

Do you want me to tell you how this happened? These formulas are immensely complicated, and I am not going to try to boggle anybody's mind with them. But I will tell you what happened in the committee formula. The committee formula penalizes the poorest States in America who will never, under this formula, significantly improve their plight. But I will tell you how it happened; how the most affluent States in America make out like bandits, and the poorest States in America, where all the poor children are, get what is left.

The committee came up with two new factors. One is called the "effort factor," and one is called the "equity factor."

The effort factor takes the average per-pupil expenditure in your State, divide it by the average per pupil expenditure of the Nation as a whole, and if you come out above 100 percent you get a bonus. They set a floor of 95 percent, and a ceiling of 105 percent.

What does that mean? That means, if Arkansas only spends 75 percent of the national per-pupil expenditure, we have to get to 95 percent before we get consideration in the formula for effort.

This may not happen in my lifetime. Not only is this formula discriminatory in the extreme, but it remains that way as long as it stands because the poor States simply can never reach the floor, no matter how hard we try and how much effort we expend. We cannot reach it.

But, if you are one of the more affluent States, and you are spending 140 percent of the national average on your children, you can let up, relax, and cut spending. As long as you do not go below 105 percent of the national average, you are in the clover. No matter how hard we work, there is no gain. No matter how lax the more affluent States become, as long as they do not get below the 105 percent national per-pupil expenditure, they lose nothing.

The second factor is "equity." Equity deals with the disparity of expenditures within a State. Disparity means that the more affluent counties in a State are spending more on education than the poorer counties in a State. But that has very little to do with a State formula. That is because most schools are funded primarily on a property tax, and some counties have a higher property tax than others.

So we do have a disparity between the Mississippi Delta where the most pervasive poverty in America exists in Louisiana, Mississippi, and Arkansas, parts of Tennessee, Illinois, Kentucky, Missouri, and the northwest part of the State, which is one of our most affluent areas.

So they say to the States in order to encourage them to equalize expenditures on children, we ought to take some money away from you if the disparity between northwest Arkansas and southeast Arkansas is too great no matter how poor southwest Arkansas is.

And they put another floor and ceiling on this equity factor. The floor is 95 percent, and the ceiling is 105 percent.

Do you know what that means, Mr. President? That means that as long as the disparity in our districts is under 95 percent, they can never get consideration for equity payments. And I will not live long enough for that to happen. It is a double whammy to the poorer States. They do not have the means to achieve equity or effort consideration so they cannot increase their share under the formula.

On the other hand, in the more affluent States, if they do not have a disparity problem, they can relax.

Let me tell you again. If this were just DALE BUMPERS talking about this formula, I would expect you to say, "Well, he is upset because Arkansas does not fare well." You would be right. I am upset because it is a pervasive, discriminatory formula.

But here is what the General Accounting Office said about the equity and disparity factors:

> This represents a new policy direction for the program to one of providing an incentive for States to equalize per-pupil educational spending. While a laudable goal, this measure may not be the best way to go about accomplishing this objective, and may be contrary to the purposes of the chapter 1 program.

The General Accounting Office goes on to say:

> The equity bonus factor provides greater per-pupil funding in States with the smallest sub-State spending disparities, and these States tend to have fewer educationally-disadvantaged students.

Translated, what that means is it is the most affluent States that are likely to have the least disparity because they have fewer poor students. The reason we have great disparity is because we have counties with unbelievable poverty, and then we have some prosperous counties. So we do indeed have big disparities. But this equity bonus factor locks in a formula which says to the people of my State that you will never get an extra dime under this formula.

The General Accounting Office goes on to say—and I want everybody to pay special attention to what the General Accounting Office said:

> If the Federal Government is going to have a policy of encouraging States to equalize local school spending disparities within their boundaries, then it should also have a policy of reducing cross-State spending disparities. It makes little policy sense to tell the States to do something if the Federal Government is not willing to do it itself. Reducing cross-State disparities requires that differences in States' or counties' financing capabilities should also be included in the formula. Yet, this was not done.

Mr. President, what does the General Accounting Office say about the effort bonus factor, the per pupil expenditures of the States as a percentage of national per-pupil expenditure?

> By including per-pupil expenditures in the formula twice, effort is incorrectly measured, and its effect is improperly magnified. No State school aid program that rewards effort, does so in this fashion.

They go on to say:

> If a measure of per-pupil expenditures is to be used as an effort of rewarding formula, the formula should also contain a Federal percentage factor to properly take into account the capacity of LEA's to fund local education spending.

In summary, the General Accounting Office says the formula under which this terribly perverse result occurred is fatally flawed because it is the more affluent districts who get all the money under this formula. It is those States that are the most affluent, where there are the least number of poor children and, therefore, the least number of disparities between school districts and spending on our poor children. And they will continue to get more of title 1 money, and my State will continue to get less because we cannot make any greater effort than we are making.

I daresay, based on our per capita income, we are making a lot bigger effort than a lot of the more affluent States who have a much higher per capita income than we have.

So, Mr. President, the reason I am shouting is because I feel so passionately about what this does to my State and other poverty-stricken States. President Clinton and I spent virtually 4 years doing nothing but trying to help an area known as the Mississippi Delta, the 10 poorest congressional districts in the State. We have done everything in the world and, incidentally, we are making some progress. Those people are beginning to see a little light at the end of the tunnel.

I can tell you that this formula provides little help. It says no matter what we do, it is not going to make much difference. There is no way we

can ever climb out of the hole that this inequity puts us under.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I yield such time as I might use.

Mr. President, I have listened with great interest to the Senator from Arkansas describe his understanding of this formula and what its implications are with regard to Arkansas. His State was provided under this fiscal year 1994 allocation some 69.9 million. Under the current law in fiscal year 1995, 76.7 million. Under our Committee formula, it would be 76.5 million. I listened to him talk about the impact of this program, about the poor and poor children.

I think, obviously, all of us would like to do a great deal more in terms of poor children, and I think it is always regrettable when we find ourselves in a situation where we are depriving some poor children to advantage other poor children. That is, I think, one of the more unfortunate aspects of any of these formula debates.

I can remember that in our own Committee on Labor and Human Resources, where we were trying to divide up a limited amount of funds and decide whether to have Meals on Wheels at congregate sites or delivered at home. You can feed three times as many people at congregate sites than at home. But, nonetheless, many people at home need that food. So you end up with needy, poor people fighting over very scarce resources. That has certainly been the case in terms of the title I programs, Head Start programs, the WIC Program, and many of the programs, including the Pell grant program, that have tried to be a lifeline for many of the neediest children and students in our country. So it is always a regrettable situation when we get into those kinds of debates and discussions.

I have to say that the administration has attempted to provide additional funding. They have in Head Start, and they have tried in the Chapter 1 Program, and in the other school reform programs. Hopefully, we will have a time in the not-too-distant future where we are moving seriously to increase help and assistance to poor children all over this country.

I have to take serious exception with the good Senator from Arkansas about which formula is going to benefit the poor children, however. As a result of the Senator's formula, in States such as Florida with 350,000 poor children, New York with 600,000 poor children, California with 970,000 poor children, the effect of the Senator's amendment is to reduce Florida by $37 million, New York by $48 million, and California by $49 million compared to what the Committee recommended.

So before we start getting so worked up about how unjust this formula is for poor children, look at what is going to happen to the poor children—if this is accepted—in these various States. There are tens of thousands, hundreds of thousands of children in those areas. As a result of the amendment of the Senator from Arkansas, we are going to see those children deprived; those children will be deprived.

As the Senator pointed out, these are balances in terms of how we are going to try and make some kind of adjustment. I daresay in the States that he talked about—Louisiana and Mississippi—we see a significant increase, under the Committee formula, over existing law. So he is not going to get any argument from this Senator about trying to do more for Mississippi and more for Louisiana. He would like to do more and so would I, but not at the expense of poor children in these other States.

So, Mr. President, what have we tried to do? We looked at the old formula which had concentration grants. To receive these grants, you had to have 6,500 poor children in your particular district, or have at least 15 percent of your children be poor. Some communities had 14, some 13, some 12 percent, and some had 6,000 poor children; they were left out. We saw inequities in those areas. In the basic grant program, we said if you have 10 poor children, you get some funding, and that went to some of the most affluent districts in this country; and we are gradually phasing those districts out of the program.

What have we replaced those with? We have provided a weighted formula, and that means giving high poverty districts a higher per pupil grant than low-poverty districts. Why? For the reasons the Senator pointed out, and the GAO points out: that the areas of greatest need are where you have the high concentrations of children in poverty. These are the areas that have the most need. These are places like Baltimore, New York, Philadelphia, Detroit, Boston, and Washington, which are among the ten poorest cities in the Nation, and many others; those places have high concentrations of poverty. The GAO said they are the areas that need the greatest help and assistance. So we used the weighted formula to take that into account.

Then we have the cost factor, which varies from State to State according to the State per pupil spending. This tells us the cost of providing an education in each State. This exists in the current formula, but we made adjustments somewhat to benefit States such as Mississippi and Louisiana.

Then we included in the formula an effort factor that gives the States a bonus for high fiscal effort; that is, if they spend a lot on education relative to their ability to spend. That is an incentive for those areas that are going to provide more for education.

Then we added an equity factor that gives States a bonus for equalized spending among school districts. This provides assistance to States that are trying to reduce the disparity in spending. Well, in my State, we are attempting to reduce the disparity, but in a different way; we say to school districts, "If you want to tax your people and spend a little more, we will not hold that against you." We lose out under that because you continue with the disparity. But some States benefit from some factors, and some benefit from others; it's a balance. We have also included a 100 percent State level hold-harmless for this fiscal year so no State will see an actual reduction in funds when the new formula takes effect.

Now, you can draw all kinds of formulas here. Mr. President, we have, I know, 8 or 10 different formulas. I have been around here long enough to know that you can offer a formula that benefits 26, 28, or 30 States and try and roll the Senate on this.

And I daresay I have an amendment that I can put out there that would benefit my State even more and benefit 30 States at the cost of other States. But I am reminded of a distinguished statesman in 1982, one of our colleagues here, who pointed out the purpose of title I is to provide supplemental education programs for poor children so they will have an opportunity to learn to the same high standards as other children. It was not created to be an income redistribution program which equalizes the difference in per capita income.

The committee formula as well as the current formula is the result of a delicate political compromise.

During the litigation of the chapter I formula in 1982, 50 Senators in Congress filed an amicus brief on behalf of the State contesting the use of 1980 census data. That brief was led by then-Senator Denton and included Senator BUMPERS and it stated the following:

> In constructing the compromise in 1978, Congress acted deliberately and carefully to build a balanced package. Congress tried to include something for each geographic region, something for urban areas, something for rural areas, something for rich States, something for poor States, something for large States, something for small States, and thus shifting even a single building block of the formula will unbalance the entire structure.

Mr. President, those are words of wisdom indeed. They apply to the formula then and they apply equally to the formula approved by the committee now contained in S. 1513.

I daresay, Mr. President, there are States where this whole process and this formula has not worked fairly, and that has been true, I think, in particular in California and also in the State of Texas.

We have tried to talk with those Senators about trying to provide additional kinds of help and assistance. We have migratory legislation that helps and assists the migrants that move through those States and one or two other programs where these States are substantial beneficiaries. There are other impacted States. The State of Georgia does not do well under this formula but in terms of the impact aid assistance that it gets, Georgia does do well and can assist many of the similar kinds of children.

We have tried to look at the total range of different Federal aid, whether in the areas of Indian education, which benefits States like New Mexico, or other programs that affect poor children and benefit other States that do not do quite as well in this formula.

So, Mr. President, in any of these various considerations, whatever we do, there are areas which we know—all of us—that there are needy and poor children that still are not having the kind of attention and assistance that any of us would like.

Under the Bumpers amendment, however, we have States that have some of the lowest State child poverty rates in the country, 10.7 percent statewide child poverty rate in one State. And under the Bumpers amendment, that State gets the same kind of per pupil allocation as the high-poverty States that he's listed out here.

How do you figure that? How do you think of that?

Mr. President, as I started off, I regret this debate because I have too much respect and affection for all those who are sponsors and leaders on the other side. They are all talking about people that I care very deeply about and that we would like to help and to assist, and those are the neediest children in our country.

I take no satisfaction in this debate and discussion, and we always find that these are difficult and complex issues. Maybe those are not the best ways. Obviously, there is a balance. There are many considerations.

You can vary and change each of those ingredients in just a very small or minor way, just by a few percentage points, and you will see the swings of millions of dollars away from poor children in one place to another.

So as I mentioned, I regret that we are in the situation where we are struggling for the allocations of resources.

I know my friends and colleagues from Arkansas and from Mississippi and from other States that are out here, the people that are making this case, are the ones that care the deepest about those children, and those that are debating on the other side I think are among those that have the deepest commitment.

So I appreciate and I respect and admire the arguments which are made, but I do think that there is sufficient justification for the existing formula that it should be retained.

Mr. President, how much time remains on each side?

The PRESIDING OFFICER (Mr. FEINGOLD). The Senator from Massachusetts has 45 and ½ minutes; the Senator from Arkansas has 39 and ½ minutes.

Mr. BUMPERS. Mr. President, does the Senator from Rhode Island wish to speak?

Mr. PELL. I request 3 minutes.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I am afraid that some of us must oppose the amendment offered by Senator COCHRAN and Senator BUMPERS. It has the effect of producing dramatic swings in funding largely to accommodate regional demographics. Such a shift could threaten the widespread support for title I funding that exists today regardless of the region of the country from which one of us comes. Actually, it could result in States ending up with a larger piece of the pie and others with a smaller piece. But it should be borne in mind that no State loses under a hold harmless provision.

By contrast the committee formula is well balanced and fair. Those who benefit come from the North, South, East and West. The committee worked pretty hard with the formula to acknowledge that State spending on education should be linked to both the cost of education and to the State's fiscal capacity. The adjustments already in the committee-reported formula add several Southern States, some of which are not wealthy but do make a major investment in education and deserve to be rewarded.

The pending amendment also includes a second fiscal capacity effort in which need is measured without sufficient consideration of the differences in the cost of living in different areas of our Nation. Several large States with very large concentrations of poverty experience significant losses of funding, something I believe we should avoid.

Also, the amendment—and here I am talking about the amendment—strikes the incentives in the committee formula that help States that spend heavily on education relative to their overall fiscal capacity, and it helps those States that have brought a substantial level of equity to their State education finance programs. I fear that removing both the effort and equity incentives would send a wrong message to the States. It would create a situation where States that do not devote a large portion of their resources to the education of children would, in the end, receive the most title I funds. This obviously is not fair and I know we all would wish to avoid it.

I urge, therefore, that our colleagues join me in opposing the amendment.

The PRESIDING OFFICER. Who controls time?

Mr. BUMPERS. Mr. President, I yield to the Senator from Mississippi 20 minutes.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, let me start off my remarks by inviting attention to this chart that is displayed behind my desk here.

It shows in yellow those States which will do better under the Bumpers-Cochran amendment than they do under the committee bill. They will get more money under the chapter I program.

The States in white will get less under the Bumpers-Cochran amendment than they will under the committee bill, but this does not mean that they do not get a lot of money. Some of those States already get very high percentages of funds in relation to the number of poor students in those States.

There are 30 States in yellow which do better under the Bumpers-Cochran amendment. There are 20 States in white.

The other thing that is shown on this map is the location of the students throughout the country who suffer from the highest poverty rates. Those are the poorest students in America, and you can see by looking at this map where they are located.

The purpose of bringing that to the attention of the Senate is to confirm what the distinguished Senator from Arkansas said when he talked about where the money goes under the amendment we are proposing as compared to where the money goes under the committee proposal.

Mr. President, children who live in poverty are the most vulnerable children. They are the ones who are the most likely to do poorly in school. They are the ones who are most likely to drop out. They are the most likely to end up with low-wage jobs or with no job at all. They are the most likely to go to prison. They are the most likely to end up on welfare.

In testimony before the Labor Committee, Secretary Riley pointed out that 82 percent of those in prison in America today are school dropouts.

Poor students in high-poverty schools perform worse than poor students in low-poverty schools.

As a matter of fact, the performance of all students in a school, regardless of their economic circumstance, suffers because of a high concentration of poverty. This achievement gap between the students in the high- and low-poverty schools widens as the children move through elementary grades into junior high school.

In 1965, the Congress passed legislation to allocate Federal funds to help provide remedial education instruction to the poorest school districts in America.

Congress recognized the impact that concentrations of low-income families have on student achievement and the ability of school districts to support adequate educational programs.

The chapter 1 program has evolved from that beginning, and it has made a tremendous difference in the lives of millions of children over the past three decades.

In another statement to the committee, Secretary Riley, said earlier this year:

When you have a flood that threatens a levee, you give most of your attention over to sandbagging the weakest part of the levee. You don't spread your sandbags around. You concentrate. Well, that has to be true with education as well, and we have a flood of problems in our high poverty schools.

But under the committee bill, chapter 1 is insufficiently targeted to high-poverty communities and schools. The scarce resources are spread very thin, and will dilute our efforts to make a real difference.

The ineffectual targeting of these funds will leave the poorest districts with insufficient funds to serve all of their high-poverty schools and low-achieving children.

While I commend very sincerely the committee and its membership for the hard work they put into this bill and the commitment the chairman and ranking member have shown to the children of America, I do not believe the Improving America's Schools Act as proposed, fulfills the original promise of title 1. It does not adequately concentrate the funds where they are needed most, in the poorest schools. Our resources must be focused in those areas that have a particularly high number of educationally disadvantaged and low-income students.

Included in the statement of purpose of the committee bill is the following declaration;

The most urgent need for educational improvement is in schools with high concentrations of children from low-income families and achieving the National Education Goals will not be possible without substantial improvement in such schools.

In order to fulfill the purpose, the bill calls for distributing resources, in amounts sufficient to make a difference, to areas where needs are greatest.

But does the bill accomplish its stated purpose? Do these funds get to the children who need them most?

The answer, I am afraid, is "no."

The bill provides a generous funding effort bonus, which was described very well by the distinguished Senator from Arkansas. It goes to those States that spend the most on their students from State resources. This so-called effort factor is also used in the cost factor elsewhere in the bill and has the effect of rewarding wealthy States because they have the resources to spend more on their students.

Now, in my State of Mississippi, as in other States where the tax base is relatively low compared to the more wealthy States, you may be surprised to find that we spend a much higher percentage of tax revenues on education than most other States do. I think Mississippi is in the top 10.

And do they get anything for that effort, that effort to allocate the highest percentage of their tax revenues to education? No, under this bill they do not get anything for that. That is not counted as effort.

You only get rewarded for effort if you are rich to start with. That is what this committee formula does. Not only does that penalize the poorest States, it does not take into account the number of school-aged children a State is responsible for educating. That is contrary to the very purpose of the act.

The bill also creates a new equity bonus. This factor uses a coefficient of variation among school districts—which is the average difference in district spending per pupil from mean or overall average district per pupil expenditure in an individual State. If this sounds confusing—it is.

Try to figure out how to measure that and what it measures. I will be surprised if any 2 of the 100 Senators would come out with the same answer.

Mr. President, this equity bonus is bad policy. The bonus purports to promote State-wide equalization of funding by the States with floor and ceiling limits that keep it from having any real leverage.

The only real effect the equity bonus has is to increase the funding that will be allocated to the State of Iowa.

Now I know that is not the intent. I did not say that was the intent. I said it was the only real effect.

The Bumpers-Cochran amendment has been developed from an analysis done by the Government Accounting Office. It is consistent with the purpose of the chapter 1 program, and it conforms to the policy of helping those who need the help most.

This amendment redirects chapter 1 funds to those States with the greatest percentage of school-aged children living in poverty. That is what it does. It ensures that each State continues to receive sufficient resources to continue and operate its programs. It does not penalize these States in white. They still get a lot of money out of this program.

The amendment does not affect the within State targeting formula, either, which will provide better targeting to the poorest schools within a State.

I want you to look at this bar graph and what it shows. It shifts very little, really, from the States that derive funds under this bill that are so-called wealthier States to those that are poorer.

Here is a general depiction of what current law gives those States. That is what the committee bill would do. It leaves them relatively unchanged as far as their positions with each other is concerned.

But what the Bumpers-Cochran amendment does is lift poorer States more nearly to the level of the amount that larger States and wealthier States are getting per student in poverty. And that is the difference between Bumpers-Cochran and the committee formula.

Let me just give you one example of the changes that are made by the Bumpers-Cochran amendment.

A poor student in the State of Mississippi would receive $817 in chapter 1 funds in remedial instruction assistance. Under current law, that same student would receive $711. In contrast, a poor student in Connecticut would receive $927 instead of the $998 he or she would receive under current law. The committee bill, however would increase the Connecticut student's share to over $1,000.

So the Bumpers-Cochran formula replaces the committee "effort" and "equity" factors with a more accurate measurement of children in poverty to be served. The Bumpers-Cochran amendment uses a "relative income per school-aged child factor" which is calculated simply by dividing adjusted county income by the number of school-aged children. And we can all figure that out. It is not mysterious or convoluted as the committee bill's equity formula is.

Ours is the only formula under consideration that fulfills the promise of the chapter 1 program by targeting our resources to high-poverty areas. The chapter 1 program is not a general-aid-to-schools program. It was and is intended to meet the needs of children in poverty and to improve their educational opportunities and give them the chance—to give them the chance—that children in wealthier schools have.

Under our formula, 28 States do better in the first year than they do under the Pell-Kennedy formula and 3 stay the same. In the third year, when the hold harmless is reduced to 85 percent, 30 States do better than under the Committee formula. The 10 States with highest concentrations of poverty receive increases; the 10 States with the smallest percentages of poor children receive reductions.

I urge Senators to help us provide better opportunities for the most disadvantaged students in America and vote for this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. BUMPERS. Mr. President, I yield the Senator from New Mexico 8 minutes.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Twenty-seven minutes.

The Senator from New Mexico is recognized.

Mr. BINGAMAN. Mr. President, I appreciate the time being yielded by the Senator from Arkansas. I congratulate the Senator from Arkansas and the Senator from Mississippi for the amendment, which I support. This amendment does seek to improve the formula which the committee has proposed for the distribution of title I funds from the Federal level to the States. It improves it by making the formula more related to poverty, and it eliminates two very highly questionable elements that are included in the committee's proposed formula; that is, the elements of effort and equity, which the Senator from Arkansas and the Senator from Mississippi both discussed.

Before describing the deficiencies in the committee's formula, I want to just refer to the charts that have been referred to by my colleagues and point out how this issue affects my own State of New Mexico.

If you look at the chart that the Senator from Arkansas has put by his chair, you can see that the child poverty, the percent of children living in poverty in my State of New Mexico is among the highest of any States listed on that chart. There are two others higher, Mississippi and Louisiana. Mississippi is at 33 percent, Louisiana is at 30 percent, and then New Mexico is at 26 percent.

The map which the Senator from Mississippi has put up I think makes the point very dramatically. I have a small copy of that here. He has here a map that shows in black the distressed counties, which are defined as "twice the U.S. poverty rate, low-income, or 3 years of unemployment." That is how they determine that. When you look at where the black on that map occurs, an awful lot of it occurs in the State of New Mexico. Clearly, the children in my State are significantly impacted by how this debate is resolved tonight.

I have been very disturbed by the formula which has been incorporated in the committee substitute—disturbed because, at the Federal-to-State level, the formula, in my view, does not achieve the targeting which we are trying to accomplish: to poor students, especially those students who attend schools with high concentrations of poverty, which we have been saying throughout the more general debate are so important in this bill.

The formula does work for the goal of targeting within-State allocations. However, it does not do so in the portion of the formula that deals with the allocation from the Federal Government to the States, and that is what Senator BUMPERS and Senator COCHRAN are trying to correct. The reason it does not do this is because, though it does include a weighting factor which looks to numbers and percentages of children in poverty, it also includes these other two factors which are unrelated to poverty or to the targeting to poverty. The two factors, again, are the effort factor and the equity factor.

The equity factor penalizes States which are not very equalized, as measured by the measurement set out in the formula as the coefficient of variation. This gets fairly arcane, to try to describe all the detail of this. But, suffice it to say that, clearly, there is a great weight put on this equity factor, which, as I said before, does not target poor children, which is the main purpose of the overall title I legislation that we are trying to pass here.

We have very limited Federal resources to help our poor children, and, clearly, to direct those resources to States which may or may not have a need for them solely on the basis of an equalization factor does not make sense. We need to target that funding on the basis of income in those States and on the basis of their ability to help their children.

On the issue about resources, I had a group of principals in my office today from my home State. They repeatedly expressed concern about the fact that less than 2 percent of our Federal budget goes to education. Clearly, when we have a very, very small amount of the Federal budget going to education, we need to do everything in our power to see that those funds go where they are most needed.

The other factor used by the committee, and eliminated by the Bumpers-Cochran amendment, is the effort factor. That factor simply, again, does not belong in a title I formula because it invariably results in penalties for poor States, and this is, after all, intended to help poor States. If we want to measure effort, why do we not measure a State's total resources and compare it to a State's total expenditures on education? Use that measure of effort, and my State of New Mexico comes out in the top 10 States. Or look at how much a State taxes itself compared to its own tax base. If you use that measure, Mississippi gets a very substantial boost.

But if you use the committee's measure, which compares per capita income to per pupil spending, then every single one of the States with the highest child poverty rates in the Nation, with the exception of West Virginia—all of those States do worse. Why is this so? States with low per capita incomes can simply not afford to dedicate as high a proportion of their spending to education as richer States do. They have to take care of sewers and roads and public safety as well as education. They just do not have as much to spend. Furthermore, their citizens have lower incomes and are unable to be taxed at the level that States with wealthier citizens are able to tax.

I would be very pleased to see this amendment adopted and see the emphasis on effort and equity eliminated from the formula.

I am also happy to see the income factor brought into this formula, as the Bumpers-Cochran amendment would. That factor brings into the formula a recognition that it is low-income areas that have the most difficulty in supplying remedial services to their poor children. By and large, these are the same areas that have the most profound problems—the most profound problems—of dropouts and teen pregnancies and low-birthweight babies and poor academic achievement. It is clearly true that big cities with high per capital incomes, such as New York and Boston, have their problems as well. But the fact is that rural America—the States with the highest child poverty rates are in rural America, and generally they do not have the resources.

A recent report by the Department of Education on the condition of education in rural schools states that rural schools have limited fiscal resources to address rising education costs and that increases in poverty have disproportionately impacted rural children.

Thus, the formula which looks to income, and not to things like effort and equity, is much more logical as a way of providing funds for poverty.

I understand the interest of the committee in school equity. It has been a long time interest of mine. Last year, I proposed a bill to establish a Commission on School Financing to study this issue and how more equitable school financing could be promoted not only within States but across the country. Although my proposed legislation did not find support from the committee at that time, the committee did hold hearings on school finance equity. We heard from several witnesses—all of whom were quite eloquent with respect to the vast disparities in school funding and the resulting disparities in educational opportunity for students.

However, those witnesses could not describe for us a single measure of school equity—it was clear from that hearing and from the research I have done that different conditions in different areas could require different levels of spending. One dollar spent in a homogeneous suburb would not equal $1 spent on a remote school serving children from an Indian reservation or $1 on children in the inner city.

Recognizing the complexity of this issue, I have asked the General Accounting Office to study the issue of school finance equity, how it can be measured and achieved, and methods of encouraging it at the State and local level. That work will take many months and will encompass many tasks. It is a complicated issue.

But the committee has made it a simple issue—it has adopted the coefficient of various approach to school equity. While it may be the only objective measure we have of equity at the moment, it is certainly not a very good

one. Let me quote from the Congressional Research Service memorandum of July 26, 1993, on Variations in Expenditures Per Pupil Among Local Educational Agencies with the States which describe the limitations and disadvantages of using Census Bureau expenditure data for calculating expenditure disparities—that is, the COV—among State LEA's

These calculations do not adjust for differences among LEA's in pupil needs, which in many cases are recognized by categorical State and Federal aid programs which provide additional funds to LEA's with high proportions of special needs pupils. For example, expenditures per pupil might be relatively high in an LEA because it has a high number of disabled, limited English-proficient, or poor children, such that the States' school finance program provides additional sums on behalf of such pupils. There might also be additional costs associated with population sparsity or density, for which these calculations also do not account * * *.

There are significant differences among LEA's in a State in the costs of providing educational services. In particular, salaries for teachers and other staff vary widely among LEA's in many States. While salary variations might partially reflect differences in teacher "quality," they are also influenced by such factors as overall labor supply and demand conditions in each area, average experience of the LEA's teacher, general living costs, or the extent and effectiveness of teacher unions * * *.

These reasons, plus problems with the data collection process itself—that is, that data are often stale and reported inconsistently within States—make this COV disparity test a rough and often misleading measurement of a State's equalization.

Yet, based on this very rough measure of equity, the committee moves millions of dollars away from States which may or may not be meeting pupil's needs in an equitable fashion to the handful of States which have successfully equalized—by reason of either a rigorous equalization scheme, or by virtue of small size or homogeneity as CRS notes is the case with Rhode Island and Delaware, or by virtue of having predominantly broad-based, county-level LEA's which is noted by CRS with respect to the relatively low equalization coefficient of North and South Carolina, Florida, and West Virginia. States that have large county wide LEA's will encompass disparity within the LEA and the differences between LEA's will be considerably less—thus the COV which is the basis for the equity factor, will be considerably lessened.

To reiterate, we have very limited Federal resources to help our poor children—why should we direct those resources to States which may or may not have a need for them—solely on the basis of an equalization factor that may be more the result of geography or LEA size than deliberate equalization efforts?

For these and a host of other reasons the equity factor as applied by the committee is simply not the way we should go if we want to do something about school equity. And I most certainly do.

The other factor used by the committee and eliminated by the Bumpers-Cochran formula is the "effort" factor. That factor simply does not belong in a title 1 formula because it invariably results in penalties for poor States and this is, after all, a poverty program.

If we want to measure effort—why don't we measure a State's total resources and compare it to a State's total expenditure on K–12 education? Use that measure of effort and New Mexico comes out in the top 10 States. Or look at how much a State taxes itself compared to its tax base. Use that and Mississippi gets a big boost. But use the committee's measure—which compares per capita income to per pupil spending and every single one of the States with the highest child poverty rates in the Nation—all save West Virginia—does worse. Look at Feinstein formula—those States all improved considerably when this element removed. Why is this so? States with low per capita incomes can simply not afford to dedicate as high a proportion of their spending to education as richer States—they have to take care of sewers and roads and public safety along with education—they just don't have as much to spend. Furthermore, their citizens having lower income, they are unable to tax at the levels that States with wealthier citizens are able to tax.

So I am very happy to see effort and equity go. And I am happy to see the income factor brought in. That factor brings into this formula a recognition that it is low-income areas that have the most difficulty in supplying remedial services to their poor children. By and large those are the areas that have the most profound problems of dropouts, teen pregnancy, low birth weight babies, and poor academic achievement.

It is true that big cities with high per-capita incomes such as New York and Boston have these problems too—but those cities frequently have more resources to try to deal with those problems than do the poor areas. The fact is that rural America—and States with the highest child poverty rates are rural States—generally does not have those resources. The recent report by the U.S. Department of Education on the condition of education in rural schools states that rural schools have limited fiscal resources to address rising education costs and that increases in poverty have disproportionately impacted rural children. Thus a formula which looks to income and not to things like effort and equity is much more logical approach to providing funds under a poverty program. And that is what this is supposed to be—a poverty program—although it is difficult to tell that when the committee propounds a formula which gives a bigger percentage increase to title I funding to Connecticut with 10.2 percent child poverty rate, than to Alabama with a 23.3 percent rate.

We have serious problems in this country—our educational system is failing to help our most vulnerable citizens—poor children. If we seriously intend to help those children we have to recognize that our precious Federal resources have to go where the need is greatest—and that might not be our own particular State. In the committee I proposed and voted for a formula which would have provided New Mexico with less money than the committee formula—but I did it because I thought it was the right thing to do—because my formula got more money to more poor kids. The Bumpers-Cochran formula shifts title I resources away from States with high income counties and lower concentrations of child poverty and to the poorer States. We all know of hideously poor areas in our States and all want as much help for those areas as we can get—but we cannot ignore the kind of evidence of need which Senators BUMPERS and COCHRAN have brought to us today.

In my State over 1 in 4 children lives in poverty; in Senator COCHRAN's almost 1 in 3 children is poor. It is time to finally send our money where the children living in concentrations of poverty live and to send that money in amounts sufficient to make a difference in their educations.

I urge my colleagues to support this amendment.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself 3 minutes.

As we mentioned before, in this formula we have tried to consider a variety of factors. But this is not a redistribution of income program. That has never been the purpose of this program. The purpose of this program is to try to positively impact the lives of children who are particularly disadvantaged. That has been the spirit of the program, and that is what we have tried to do in our formula.

In fact, we have considered a variety of factors: the weighted formula factor to aid areas with high concentrations and high numbers of students in poverty; the cost factor; the State effort factor; and the equity factor.

The fact of the matter is, New Mexico receives a 14 percent boost in our formula over current law. New Mexico also receives $8.3 million under title I of the Bureau of Indian Affairs setaside. That also represents money for poor children. In effect, New Mexico's poor children are counted once under Title I, and if they are children of Indians, they are counted again. They do not do that in other States, but they do in New Mexico. And we still increased

their funding 14 percent in our formula. That is not even to mention the $34.5 million that New Mexico receives in impact aid. We did not say, "Well, because they get the impact aid, we will give them less Title I money."

While people are getting so worked up about the inequities of our formula, we might pause to ask what the logic and rationale of counting poor children twice in New Mexico is. Understand, I am not opposed to how it works. I think the challenges for Native Americans are some of the most difficult, compelling challenges children anywhere face. However, when we are coming out and talking about justifying all of our positions on this, I find it somewhat difficult to agree with my colleague from New Mexico. I certainly agree that impact aid is important; we receive about $5 million in my State too, and we are glad to get every dollar of it. And I think we should be careful to keep the whole picture in mind during this debate: Title I, impact aid, and other programs as well.

I think, Mr. President, that the effect of this amendment would be to significantly reduce the kind of assistance to children delivered in major poverty areas. Under this amendment, California will receive $50 less for every poor child. That figure reaches $100 per pupil in New York, and over $100 per poor child in the State of Florida. Puerto Rico loses $12 million under this formula and has a child poverty rate of 66 percent, twice the poverty rate of any State in the Union.

We may not have it perfectly right, but I daresay, even the Washington Post wrote approvingly that:

> The Clinton administration has been pushing hard for a better formula. . .. The Senate Labor and Human Resources Committee last week produced a compromise that would phase out some of the misdirection in two years, partly by changing the formulas by which states can reduce a school's allocation one year to the next (currently, it's very slow), and partly by cutting a few steps out of the elaborate State-to-county-to-district-to-school process by which the funds reach their ultimate direction.

As I said, it is difficult to argue with the concept of getting additional funds into areas where there are poor children. I made that argument before, and I am not going to state it again.

If I could yield to the Senator from Illinois and then the Senator from Iowa. How much time remains, Mr. President?

The PRESIDING OFFICER. Thirty-eight and a half minutes.

Mr. KENNEDY. I yield 10 minutes to the Senator from Illinois, and 10 minutes to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 10 minutes.

Mr. SIMON. Mr. President, I know it is easy when you are on this floor and you put a formula together and you get the numbers, to get 50 votes. But I have from time to time voted for formulas where the State of Illinois was not a beneficiary because I believed it benefited the Nation. And that is the kind of situation we are in right now.

Take a look at that map behind Senator COCHRAN. It is very impressive. There is only one minor thing that is wrong with that, it ignores the poverty numbers. In the city of Chicago, there are 313,000 poor kids in the public schools. If you look at this map, it does not even get a dot on there. I look down at my State, and I see three small rural counties and they are on the map. Something is wrong. The Robert Taylor Homes in Chicago probably has more population than any one of these three counties. It is just totally ignoring the numbers.

I heard the distinguished Senator from Arkansas say this is the worst formula he has ever seen. Let me tell you how we have improved the current law. Under the current law, in my State of Illinois, the North Brook/Glenview District, which has 1 percent of students in poverty, gets $12,309 per student in poverty. The city of Chicago, which has 313,000 poor students, gets $453 per pupil. Lake County, the Lake Forest School District, a very wealthy school district, gets $3,900 per pupil. The Waukegan School District with 5,714 poor students gets $165.

I could go on.

This really is a fair formula. I do not see our friend from Arkansas on the floor, but the cosponsor is the Senator from Mississippi. I would be interested, if he can respond, the current law gives 43 percent of these funds to the highest poverty districts. The Senate bill, the formula we have, makes it 54 percent. What is the percent under the Bumpers-Cochran amendment, if my colleague can give me the answer?

Mr. COCHRAN. Mr. President, if the Senator will yield, the percentage the Senator is asking for is what percentage of what?

Mr. SIMON. Is what?

Mr. COCHRAN. What is the percentage referred to? I heard your percentages. You said current law is 43 percent, the committee bill is 60 percent, or something like that.

Mr. SIMON. Twenty-five percent of school districts with the highest poverty rates. This focuses on them.

Mr. COCHRAN. What our bill does is target the money to those with the highest percentage of poverty within their districts.

Mr. SIMON. What I am trying to get at is the flaw in the Senator's amendment. He is focusing on percentages rather than numbers. The map shows that. The city of Peoria—I do not remember the numbers in poverty there, but it is a very high percentage. It does not even make it. Milwaukee, WI, has some poor people, poor students in Milwaukee, WI. Sorry, it does not make it on this map. I think we have to recognize a deficiency there.

Second, I would underscore to my colleague from New Mexico, for whom I have great respect, if we are going to do just what benefits our State, each one of us, then I am not going to vote for American Indian education. Now the reality is I support it because I think it is important. But Illinois does not get a penny from that. If each of us is going to be so provincial that we say if this does not benefit my State another $10 I am not going to vote for it, we are not going to benefit the Nation.

I cannot tell you how, when there is a poor child in Milwaukee, WI, and that poor child does not get help, that it is going to hurt Illinois. But I know, intuitively, that is the case. And so we put a formula together that ignores the numbers.

Yes, we may pick up 51 votes here, and I suppose the odds are that we will, but we do not serve the Nation well. I hope we have the courage to do the right thing.

This formula may not be perfect; no formula is. It is always a lot of compromise. But this formula really concentrates on helping poor children, and that is what we ought to be about in this body.

Mr. BUMPERS. Mr. President, I wonder if the Senator from Illinois will yield.

Mr. SIMON. Very briefly for a question.

Mr. BUMPERS. I was in the Cloakroom, and I heard the Senator ask me and Senator COCHRAN how our formula works.

Mr. SIMON. Yes.

Mr. BUMPERS. It is weighted like yours except for two things: equity bonus factor and the effort bonus factor, both of which the GAO says will take us in the opposite direction of what we are trying to accomplish.

Mr. SIMON. I have not read the GAO report, but let me talk about the equity factor. If there is anything in here I criticize, it is that we did not put enough for the equity factor. The disparity that we have between rich and poor school districts in our States is something we ought to be addressing and we are not addressing. We address it just slightly here, and we ought to be addressing it more.

The second is the effort factor, and I would make a correction to my friend from New Mexico on this. This is State spending on education relative to States' fiscal capacity. It is not that you are spending a flat amount per pupil. I think these are both very properly in this formula. I think we have put together here something that makes sense for the Nation.

Real candidly, it may not make sense temporarily for your State, whatever State you are from. But it really makes sense for the Nation. I am sensitive to the people of the State of Illinois, and I try to fight for the people of the State of Illinois, and, yes, my State

does benefit slightly from this. But my title is not Illinois Senator; it is United States Senator. We have to look at the national interest as we cast this vote.

I yield my time.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. Who yields time?

The Senator from Iowa is recognized for 10 minutes.

Mr. HARKIN. Mr. President, we have a lot of formula fights around here, and none of them are ever perfect. However, I believe the Pell-Kennedy formula is fair and it is balanced. I think any effort to change it ought to be rejected. It is more fair and more balanced, I believe, than the one being proffered by the Senator from Arkansas and the Senator from Mississippi.

I was listening to what the Senator from Illinois was saying. I noticed Iowa here. We have some counties down here in southern Iowa with poverty rates exceeding 20 and 25 percent. They are not depicted on there.

I see Florida. Florida has a lot of intense areas of distressed counties, yet they lose money. They lose money under Bumpers and Cochran. So does Colorado, and they have a lot of these little black dots, if that is what you are looking at there. They lose money under Bumpers and Cochran.

I heard my friend from Mississippi say a little while ago that the Pell-Kennedy formula only helped rich States. Well, I am sorry. Go back and look at it. Our formula helps West Virginia, helps it quite well, and that is certainly not a rich State.

I think the alternative formula misses the mark. Let me try to explain what the Pell-Kennedy formula does again. The Federal-to-State allocation includes a weighting provision to provide additional funds to areas of high numbers or percentages of low-income children. That is in the Pell-Kennedy formula.

However, there is an additional part of the formula that includes incentive payments for State effort and equity. With the addition of these incentives, this formula breaks new ground.

Some say they are unnecessary. I disagree. I think we have to recognize a few simple realities. First, the underlying premise of title 1 programs is that it will provide supplemental services for the education of economically disadvantaged students. Unfortunately, in far too many schools the resources are insufficient and title 1 is not providing the supplemental services that were envisioned.

Second, the Federal Government right now provides about 6 percent of the revenues for elementary and secondary schools—small but very important. In 1980, it was 11 percent, and that has fallen to 6 percent, and with the budget constraints, it is probably not going to go up very much more than now.

Some States have placed a high priority on education and providing State resources for K through 12. Schools in all these States are heavily financed by local property taxes, and so what happens, Mr. President? We know what happens. If you have high property values, you have good schools. If you have poor areas, you have bad schools.

Now, some States have taken very aggressive action to equalize funding so that all children will have an equal opportunity to succeed. However, other States have not addressed these huge financing differences.

So what we have built into the Pell-Kennedy formula is a carrot, a reward to say to States: Look, if you will do a better job at equalizing your formulas, you will get better help. That is what the effort and equity provisions are for, to reward and encourage these States.

Read Jonathan Kozol's book "Savage Inequities." He portrays the differences that exist in our Nation's schools.

In our country, property taxes fund local schools. So if you have a wealthy district, you have good schools; poor districts, you have poor schools.

Now, in my State of Iowa—and I am very proud of it—in the 1970's, our State legislature passed very aggressive laws to equalize this, to say that if you have a rich district, you are going to get less of the State aid for schools than if you have a poor district. That started in the 1970's. I think it is one of the reasons why our Iowa students K through 12 always place in the highest in all of the tests—math and science and everything else. Iowa students always place highest because we have equalized it to the greatest extent possible. There are other States that have not done that.

I ask the proponents of this amendment, the Senator from Arkansas and the Senator from Mississippi, how have your States done in equalizing their benefits to these poor school districts? Take a look at it. That is what we are saying here. If your State has made a good effort, you will get a little bit more. We are trying to provide that incentive. I say it to the Senator from Arkansas, too. That is all we are trying to do. We do not have enough money to spend in every rich district in the country, so we are trying to get the States to make a little bit more of an effort.

That is all the Pell-Kennedy formula does. You can talk about how many States win and how many States lose, but the Pell-Kennedy formula is fair. It may not be perfect. Obviously, if each of us could draft a formula, we would draft it to benefit our States. But that is not the case here. We drafted a careful formula to do two things: provide money for concentrations where that is necessary, to meet the needs of those kids in highly concentrated areas, and, second, to try to give some incentive to States to do better on their own in equalizing their formulas. That is why I would urge my colleagues to support the Pell-Kennedy formula and to reject the proposed change in that formula.

The PRESIDING OFFICER. Who yields time?

Mr. BUMPERS. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Eighteen minutes.

Mr. BUMPERS. And how much time does the——

The PRESIDING OFFICER. Twenty-four minutes.

Mr. BUMPERS. Mr. President, Senator COCHRAN and I are not trying to punish the more affluent States, but if you look at the map, you can see where the poverty is. You see those black areas? That is where twice as many people live below the national poverty rate. That, friends, is poverty. And what does this formula do to redress that? It gives more money to the more affluent States. It is true that poor States get a little bit more, under the committee formula.

While most States get a little bit more under the committee's proposed formula, it is because there is a $7 billion-plus authorization. But please do not do us any more favors like this. We cannot stand it. I am reminded, in looking at that map of Willie Sutton. Someone asked him, "Why do you rob banks?" He said, "Because that is where the money is."

This program is intended to help poor children and the money ought to be going where the poor people are, and it is not. Take the State of Massachusetts—and I am not picking on the floor manager's State—but take the State of Massachusetts with 6 million people, and Arkansas with 2½ million people; 24 percent of our children are in poverty, and 13 percent of the children in Massachusetts live in poverty. We get $704 under the committee bill. Massachusetts gets $1,023, 40 percent more than we get per child. They get between $40 million and $50 million more even though they have only slightly more poor children than we have.

Do not do me any more favors like this.

In Arkansas, we are at 70 percent of the per-pupil expenditure of the national average, which is a little over $5,000 per pupil. Thirty-one States are below the national average. But if you, like Arkansas, are at 70 percent, and you are about third or fourth from the bottom in per capita income, I promise you my children will be dead before they match the 95 percent level for effort the committee bill has demanded. The committee says that until you reach 95 percent of the national per-pupil expenditure average, you cannot get another penny under this formula.

You think about that. And when you are trying to reach such massive figures as the difference between 70 percent and 95 percent of the national average, the children in my State will be

dead before they get another nickel under this formula.

What did the General Accounting Office say about the so-called equity bonus on disparities? In my State we have a property tax which pays about 50 percent of our education expenditures. You might not like it, but that is the way it is. We have a property tax. The more affluent counties spend more money on schools, but not because of a State requirement. The State actually sends more money to the poor counties than they do to the more affluent counties. But if the counties that have a little more money and want to spend a little more on education and increase their property tax a little bit more, why should they not? They should. But they should not ever plan on getting any more money under this formula because they will never reach the 95-percent level in the equity bonus set out by the committee, or the so-called "equity bonus per person" expenditures per child.

Here is what the General Accounting Office said. I want you to listen to this. This is what the General Accounting Office said about the equity bonus factor:

> The equity bonus factor has a floor on it that eliminates the incentive for improvement in States with the greatest spending disparities.

The Senator from Illinois made much of the fact that the committee is trying to get the States to eliminate the disparities in spending on students, and that is a very laudable goal. But the formula in effect says, don't worry about it, you will never reach it.

The General Accounting Office says there is no incentive to improve—and there is not—especially for those poor States. Then why have such a factor?

I will tell you exactly why it is in there. It is in there to make sure that the wealthiest States in America—New York, Maine, Connecticut, Rhode Island, Pennsylvania, Illinois, Ohio—get the money. They get the money, and they will continue to get more. I thought the Civil War was over. However, the States on that map with all those black dots will never benefit from this formula.

Mr. President, somebody had to come early and stay late to think up this formula. How in the world can you justify the most affluent States of America, which I just named, getting anywhere from $1,000 to $1,200 per poor child, and the State of Arkansas getting $704, the State of Alabama getting $710, and the State of Mississippi getting $742? How do you justify that? Answer: you cannot.

We probably will not prevail on this vote. A few in this body have gone to dinner, will walk in not having heard the debate, and will walk down to the floor managers, and, say, "How should we vote?"

It is so discouraging, Mr. President. You do not see any little black dots in Massachusetts. You do not see any little black dots in New York. You do not see any in Iowa. You do not see any in Indiana. Look where they are. Why do you think I have worked as hard as I have on this amendment? Because this is a demonstration of a significantly inequitable formula.

There is one thing I want to say about this that is good. The committee said if you do not have 5 percent of children in poverty in your school district, you get nothing. That is a step in the right direction.

Mr. President, I yield the floor, and reserve the remainder of my time.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I listened carefully to the Senator from Arkansas. I draw his attention to the fact, for example, under his formula the State of Utah—which has the third or fourth fewest poor children in the country, third or fourth lowest number of poor children in the country—and under the Bumpers formula, they have one of the highest increases; one of the highest increases. They go up 9.8 percent, and they have 10.9 percent poor children.

So, with all respect, I would have the facts, and tell those to the mothers of children in California or New York or Florida where you have hundreds of thousands; 350,000 poor children in Florida; 600,000, 970,000, and every one of those poor children under the Senator's formula goes down. You wonder why we work so hard at the formula.

We might not have it perfect, Mr. President. But if you start balancing these various factors out—this is just looking over the list. I was beginning to become convinced, until I started looking over the facts of this: 10.9 percent; three other States have lower numbers; 9.8 percent increase, and one of the fewest numbers.

Mr. President, we have tried. All right. Go back to the percent of income—Utah is 15,000; Arkansas, 15,006; and, Utah 15,007—and we find that the income is virtually the same, one of the lowest numbers of poor children in Utah, one of the highest increases under the Bumpers formula.

Yet, we see the dramatic reduction in the coverage of where the concentration of poor children are. As we have said, and as the Senator from Arkansas said, this is not a redistribution formula, this is not a redistribution; it is a program that should be targeted on the children, targeted on the cost of education, targeted on the efforts that are being made in those States to provide funding for the education, and targeted on the efforts of the State to reduce the disparity. Those are the factors that we have included in there. You can vary those to some extent. You can say "just poor children" and come out one way. It does seem to me that this is a balanced formula.

As I say, I regret the fact, and I wish we had additional kinds of resources to be able to deal with all of those. But, quite frankly, when you look at how the formula works in those particular instances—and I did not have the chance to go through others, but I think there are others—look at how it even works on Puerto Rico. Under this formula, Puerto Rico loses $12 million, and they have a child poverty rate of 66 percent, which is twice the rate of any State in the Union. I do not know how they fell through the cracks when you are talking about the number of poor children. But that is the effect. There are going to be more poor children that are going to be adversely affected under this program.

How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 19 minutes remaining.

Mr. KENNEDY. I yield 5 minutes to the Senator from Iowa [Mr. HARKIN].

Mr. HARKIN. I thank the chairman. There is one State the chairman left out. If this formula is so all-fired perfect, I say to my friend from Arkansas, here is New Hampshire with one of the lowest poverty rates—7 percent—and they get an increase. If it is all-fired perfect, how come that happens?

To follow up with what the chairman said, the Senator from Arkansas leaves the implication out there that somehow the formula we came up with does not help poor States. Well, tell that to Mississippi. Mississippi, under the Pell-Kennedy formula, is better than current law—not as good, obviously, as what the Senator from Mississippi wants, but it is better than current law; Louisiana, better than current law; West Virginia, better than current law; South Carolina, better than current law. These are all poor States. We just did not give as much as what the Senator from Arkansas wants.

Second, let us turn to this chart. I have been looking at this, and I was quite intrigued by it. I saw the big chart on the other side. I looked at the little one here with all these little black dots on it. I could not quite figure it out at first, but now I have it figured out. It is a very ingenious little chart, all these little black dots, with a lot in Arkansas and a lot in Mississippi. I looked down here at New Mexico and Arizona, and I saw big counties with these big black dots out there. I read what those black dots mean. It says "a distressed county with twice the U.S. poverty rate, low income and/or 3-year unemployment."

So what could happen is you could have a county out here in West Virginia—it is colored black there—with twice the U.S. poverty rate—I will take the extreme—which might have two people living in the county. But you could have a county up here in Massachusetts, or in Chicago, and it could have 5,000 kids, maybe not twice the poverty rate but may be one-and-a-half

times the poverty rate. It does not show up here. This chart is as phony as a $3 bill. It does not give you an indication of where the real need is, because you might have just a few people in one of those counties out there and, yet, you have high concentrations in New York, or Chicago, or Miami, or even, yes, Los Angeles, south Los Angeles. This chart really does not tell it all.

I believe the Pell-Kennedy formula is fair. It does not provide for these big swings in States, which this amendment will do. What the effect of this amendment, I fear, will be is that it will start to pit States against one another, with poor kids in one State against poor kids in another State. Hopefully, that is what we tried to fight against in the formula we came up with.

Last, the Senator from Arkansas is a good pleader. If I ever have to go to court, I want him as my attorney. He makes a great argument. But if you look behind the argument, you have to ask yourself in these States: What is the State doing in its effort to equalize, to make sure that those areas of the State where they have high property taxes, high-income areas, where the State is saying you have a responsibility to fund other parts of the States, where we have low property taxes and poor people and low incomes? That is part of the formula we build in here, and I believe it is vital that we send that strong message to the States.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BUMPERS. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 9 minutes remaining.

Mr. BUMPERS. Does the Senator from California wish to speak?

Mrs. FEINSTEIN. I do. If there is time, I might speak at this time, or I will speak later.

Mr. BUMPERS. You are opposed to the amendment, are you not?

Mrs. FEINSTEIN. That is correct.

Mr. KENNEDY. How much time do I have?

The PRESIDING OFFICER. The Senator has 15½ minutes.

Mr. KENNEDY. I yield 7 minutes to the Senator from California.

Mrs. FEINSTEIN. Mr. President, I understand the emotion and the passion behind the comments of the Senator from Arkansas, and I must say I feel some emotion and some passion about this subject, too. As a matter of fact, I had my staff pull the text of Ecclesiastes, chapter III, which says there is a point in time for everything, and a time for every affair under the Heavens. It goes on to say that there is a time to be born and a time to die, a time to plant and a time to uproot the plant.

I think that tonight is the time really to join the fight on chapter I, because I am one of those that joins Senator BUMPERS in a dissatisfaction over chapter I. I would like to, hopefully, without too much passion and emotion, make the case, because the way I look at it, it comes down to one basic elemental truth: a poor child is a poor child. You can have redundant factors, and you can have hold-harmless formulas, but if the money does not follow the poor children of the Nation, an enormous disservice is done. And the money does not follow the poor children of the Nation under the Kennedy-Pell formula.

As Senator KENNEDY pointed out, my State has the largest number of poor children in the Nation—969,762 poor children. Yet, we are a high-cost State, not a poor State. And there are pockets of poverty all over the State. A poor child in California, under the Pell-Kennedy formula, would get $783. A poor child in Connecticut—and a poor child is a poor child—would get $1,025. A poor child in Massachusetts, $1,024. A poor child in New York, $1,082. A poor child is a poor child. A poor child in Rhode Island, $1,064. In Connecticut, there are 53,000 poor children. In Massachusetts, there are 120,570. In New York, there are 597,134. In Rhode Island, there are 20,539.

My point is that the money does not follow the poor children, and that is the flaw with whatever formula any committee comes up with. The time has come to change the formula. In Texas, it is $729 a poor child, not $1,000, with 803,000 poor children.

So my State loses $21 million, a State that has a deficit of $5 billion, that cannot raise local taxes because of proposition 13, that has a budget deficit that is $5 billion in debt, and that spends 40 percent of its budget on the education of children.

So the more children you have that are poor, the more you are disadvantaged under this formula. It is just fact. It happens that way. You can add cost, you can add effort, you can put redundancy on redundancy, and all it does is keep money from where the poor children are in the Nation and where they are moving. The fact is poor children move.

That is what appeared to me last year when Senator KENNEDY and I entered into a colloquy, and this year the proposal is going to be worse. Only 2 percent of chapter 1 funds go to school districts in which more than 75 percent of students are poor. Less than half of chapter 1 funds goes to schools considered to be high poverty areas.

We will receive 11 percent of all chapter 1 grants, $667 million out of $6.3 billion. While the number of poor children in my State grew by almost 250,000 children, almost 40 percent between 1980 and 1990, there was no adjustment in California's allocation for 13 years or any other States. For California the failure to use updated data cost $126 million in 1993 and cost growth States a total of over $400 million in that year alone.

The money does not follow the child. A poor child is a poor child. The money should be directed on an absolute formula grant as to where the poor children really are in this Nation, and they should follow those children. It should be updated periodically. It should not have to wait 10 years or 13 years. If we follow this same rationale, by the year 2000 there is going to be enormous discrepancy—if we follow this same formula.

So, I would like to just point out a couple of things in my State that are going to happen. This is a projected increase between 1990 and 2005. We will have a greater than 40 percent increase in poor children in these areas; San Diego, San Bernadino, Riverside, the Los Angeles area, in the entire central valley, Fresno. More and more by then, California will be dominantly people of color, poor—which already is happening—more and more immigrants, more and more illegal immigrants.

In the areas that are slashed diagonally, there will be a 25 percent to 40 percent increase, and in the areas this way a 25 percent increase in poor children.

So the situation is only going to compound dramatically under Kennedy-Pell in terms of numbers.

The difference in per-pupil resources is created by something in the chapter 1 formula called the cost factor, and that raises or lowers State allocations by up to 20 percent. As an example of one of the school districts getting the less funding——

The PRESIDING OFFICER (Mr. ROBB). The time yielded to the Senator from California has expired.

Mrs. FEINSTEIN. Is it possible to have yielded a few more minutes?

Mr. KENNEDY. I had thought the Senator was going to speak in opposition to the Bumpers amendment, mistakenly. I have others who want to address that.

I think in fairness to those, particularly since those States are going to be affected, maybe the Senator from Arkansas will yield time.

Mrs. FEINSTEIN. That is fine. I have all night. I can wait.

I thank the Senator very much.

The PRESIDING OFFICER. Who yields time?

Mr. BUMPERS. How much time do I have?

Does the Senator have someone who wishes to speak?

Mr. KENNEDY. Senator JEFFORDS wished to speak. I yield 5 minutes.

The PRESIDING OFFICER. The Senator from Vermont is recognized for up to 5 minutes, with the time charged to the time of the Senator from Massachusetts.

Mr. JEFFORDS. Mr. President, I rise in support of the title 1 formula.

Vermont really does not have anything to gain or lose by either formula. We are going to get the same amount under the Bumpers-Cochran as we did under the Kennedy formula, the committee formula.

But I believe that it is important for those of us on the committee to take a look at the problems and priorities of the Nation on a more global scale and put regional differences aside.

The formula we are considering today is a result of 2 years of investigation on the part of the committee, 2 years of crafting a formula which incorporates and combines suggestions from policy experts, children advocates, the administration, the General Accounting Office, and others, and represents a constructive new direction for Federal chapter 1 funding.

Most importantly, the committee formula represents an intricate balance between several interrelated factors; State poverty, the cost of providing educational services, State tax efforts for education, and the degree to which a State has equalized funding across State lines. This last factor I consider particularly important.

I urge my colleagues not to tinker with one part of the formula, for it will affect the delicate balance that has been created.

The formula recognizes that it costs more to educate poor children when they attend schools which have high numbers of concentration of poor students and provides grants up to 40 percent higher to serve students in those types of schools. It recognizes that the cost of providing educational services to children also varies from State to State on account of cost-of-living differences between those States and the cost-of-education difference between those States.

Furthermore, for the first time, the formula provides rewards and incentives to those States which carry a high tax burden for education, and to those states which have achieved a sufficient degree of equity in funding for public schools across the State. And that has been a very severe national problem. We should reward those States that have tried to do something about the equalization of funding among the States.

No formula will account for the needs of every State. I think the chairman did an excellent job crafting a formula that puts policy before politics, and in doing so sets a bold and positive new policy for Federal education funding.

Let me just make a few points about the competing formula which has been advocated here by Senators BUMPERS and COCHRAN. This formula ignores the effort and equity factors put forward by the committee. As I said, these are very important factors for a new formula, factors which I believe represent a constructive new Federal policy.

In the committee formula, States are rewarded when they show a high fiscal effort to support education, regardless of their wealth. States are rewarded when they have made progress towards equalizing funding across district lines.

My State and many States will tell you it is incredibly difficult, and we failed this year in our effort to make our system better. The formula we are debating now will eliminate the factors and, in my mind, will be a significant step backward in developing a formula for the future.

While no formula is perfect, this one would reward those who spend the least on education for their children in those States where the Federal Government already picks up more than their fair share of the tab.

Many of these same States have significant amounts of federal money coming from various programs across the spectrum. Vermont, I know from my own analysis of our situation, has less Federal money coming in from other Federal programs, education and otherwise, than many of the States who would benefit under this formula.

In addition, while the formula would benefit my own State only slightly, it would destroy the chapter 1 program in several States where the problems of poverty are severe. That is why I would be against it and recommend a vote against it.

For instance, California with nearly one-eighth of the poor children in the country, would lose nearly $50 million under the competing formula.

Mr. President, I again want to echo that I feel it is critically important that we establish new Federal policy, and the formula this committee has worked on has done an excellent job to bring new factors in that will provide a much more equitable situation for our schoolchildren, especially those in poverty.

Mr. President, I yield the floor and yield back my time.

The PRESIDING OFFICER. Who yields time?

Mr. BUMPERS. Mr. President, how much time do I control?

The PRESIDING OFFICER. The Senator from Arkansas controls 8 minutes and 40 seconds. The Senator from Massachusetts controls 2 minutes and 3 seconds.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, my friend from Iowa, one of the dearest friends I have in the U.S. Senate, called the map which sits behind Senator COCHRAN, phony. You think about that. I know that he is a well-intentioned person. I know that he cares about poor people. I know his heart is in the right place.

But how can he call those black dots, where the poverty rate is twice the national average, phony? I would like to take the Senator from Iowa over into the Delta of eastern Arkansas and take him to about 10 or 15 counties where those black dots are. It is not two poor people, as he suggested. It is thousands and thousands of poor children, mostly black.

The Senator from Iowa said, if we stay like this, we are just going to pit States against each other. You could not have fired on Fort Sumter and come up with a worst case of pitting States against States than the committee formula.

I have pointed out at least twice, and maybe three times, in the course of the evening that the big bucks, $900 to $1,200 per poor child, are going to New York, Massachusetts, Pennsylvania, Connecticut, Rhode Island, Indiana. No black dots in those States. They have poor children, but they do not have the concentrated poverty that I am talking about. It is not just the concentration of poverty, it is the concentration of poor children.

I do not begrudge New York, Massachusetts, or any of those States the amount of money they get under this formula. I want them to educate their poor children as well.

Why is a poor child in New York or Pennsylvania or even Vermont worth $1,200 each and a poor child in my State only worth $700? Talk about pitting State against State.

And the Senator from Massachusetts said, "Well, look at Senator BUMPERS' and Senator COCHRAN's formula. My goodness gracious, look at Utah. Poor little old Utah, with about a million people and an 11 percent poverty rate, 2 percent less than the State of Massachusetts, and they are getting just about the same amount of money Massachusetts is getting."

Well, look at Utah.

Our formula is not perfect. It is designed on what the GAO said was the best you could do.

I was practicing law one time and another lawyer told me a story about a guy that had just been charged with murder. And he told the cop, he said, "Why are you looking at me? Look at that jaywalker. Why don't you arrest him? The guy committed murder and he says, "Get that jaywalker."

And here we have, "Look at Utah. Why don't you look at Utah? Don't look at New York and Connecticut and Rhode Island and Massachusetts and all the other States that make off like bandits. Look at Utah."

Mr. President, there is one unassailable fact: the wealthy get wealthier under this formula.

If this were just a Senator from Arkansas speaking, pay no attention. It is the investigative arm of Congress on whom we rely for almost everything, the General Accounting Office. What do they say? They say that this formula to disburse $7 billion-plus, to try to help poor students in the schools of America, has the very opposite effect. Not me, the General Accounting Office.

They say the equity bonus factor inserted in the committee's formula, under the guise of saying we want disparities eliminated will have the very opposite effect. It will not eliminate the disparities.

And in light of that, they said, "Why is this even in the formula?" And with regard to the so-called effort bonus factor, where you take the average per pupil expenditure in your State and compare it with the per pupil expenditure as a national average, 31 States are below the national average.

My State is at 70 percent. The committee bill says, "Until you get up to 95 percent, you are stuck at $704."

Do you know what that would require in a State like mine? It would require something like a 20-percent property tax increase; a 2-cent sales tax increase. We cannot do it. We are a poor State. That is the reason I am pleading.

But the committee says this is the fairest formula they could come up with. And what they are saying is, "Senator, your children will lie in their graves before the State of Arkansas will ever get to 95 percent of the effort. And, therefore, as long as this formula is in effect you will never get another penny under the so-called effort equity bonus."

What did the General Accounting Office say about that? There is no incentive for the poor States, where most of the poverty children are, to try to reach it, because they cannot. It is not an incentive. Neither the effort to eliminate disparities within States has an incentive in this, nor does the incentive to get people to spend more per pupil in this bill. On the contrary, both of them are disincentives.

And so let me just say, in closing, to my colleagues, if you are from Massachusetts, New York, Ohio, Illinois, Pennsylvania, Rhode Island, or Connecticut, you would be an idiot to vote against this. It is what we call in Arkansas "a bird nest on the ground."

And if it passes and it becomes law, to all the States that we are talking about, you are locked in. It would take a mammoth effort to ever get another nickel under this formula.

Mr. President, do I have any time remaining?

The PRESIDING OFFICER. The Senator has 21 seconds remaining.

Mr. BUMPERS. I yield to the Senator from Mississippi the remainder of my time.

The PRESIDING OFFICER. The Senator from Mississippi is recognized for up to 15 seconds.

Mr. COCHRAN. I thank the Senator for yielding.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the GAO addressed to me and the Senator from New Mexico [Mr. BINGAMAN], on an evaluation of the formula alternatives before the Senate now.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

GENERAL ACCOUNTING OFFICE,
HEALTH, EDUCATION AND HUMAN SERVICES DIVISION,
Washington, DC, June 7, 1994.

B-257503

Hon. THAD COCHRAN,
U.S. Senate.
Hon. JEFF BINGAMAN,
U.S. Senate.

The Senate is considering a new formula for distributing federal assistance for the educationally disadvantaged under title I of the Elementary and Secondary Education Act amendments of 1994. The new formula, described in Senate bill S. 1513, would distribute federal aid for the educationally disadvantaged on the basis of four factors. In response to your request, this letter provides our views of these four factors in light of the program's objective to target funds to children with the greatest need.

Under S. 1513, funds would be allocated under one formula, which contains four factors:

The first is a weighted measure of poor children that serves as a proxy for the number of educationally disadvantaged children. The weighting scheme provides a higher per child allocation to school districts in counties with high poverty rates and high numbers of children in poverty.

The second is a state average per pupil expenditure factor, a measure of total state and local spending on education per pupil, that serves as a proxy for state costs of providing chapter 1 services.[1] Under current law, this factor cannot exceed 120 percent or fall below 80 percent of the U.S. average. Under S. 1513, this factor would range between 115 and 85 percent of the average per pupil expenditure in the United States.

The third is an effort bonus based on state per pupil spending expressed as a percentage of state income, which is a proxy for the level of "effort" the state makes in funding elementary and secondary education in the state. However, this factor must range between 95 and 105 percent of the nation's average effort, rewarding those states with the greatest effort with a bonus in their chapter 1 per pupil funding.

Fourth, an equity bonus generally based on the coefficient of variation in per pupil education spending in the state[2] serves to reward states that have low disparities in per pupil spending in the state; states with great disparities will be penalized. This factor must also range between 95 and 105 percent; states with the lowest disparities are weighted 105 percent, giving them a bonus in their chapter 1 per pupil funding.

In summary, while the goals of S. 1513 are laudable, the new grant allocation formula may not be appropriately designed to increase targeting to high poverty areas and to reward states that reduce inequities in per pupil spending. An unintended consequence of adopting the new formula may be to produce less—rather than more—targeting to educationally disadvantaged children.

EXTRA WEIGHTING FOR AREAS WITH HIGH POVERTY LEVELS COULD BE INCREASED

The bill's proposed formula provides extra weighting, which results in somewhat higher funding per child, to target additional funds to serve children in areas with high concentrations of poverty. In a 1992 report, GAO recommended that counts of children receive greater weight in high poverty areas to better reflect the greater number of educationally disadvantaged children in these areas.[3] However, the weighting scheme adopted in S. 1513 may not provide high enough weight to sufficiently target dollars to counties with high concentrations of educationally disadvantaged children. For example, the need for chapter 1 funding in high poverty counties may be as high as 150 percent of the need in low poverty counties, but the weighting scheme in S. 1513 is insufficient to provide allocations that will compensate for this 150 percent difference in need.

STATE AVERAGE PER PUPIL EXPENDITURE IS A POOR PROXY FOR COST OF CHAPTER 1 SERVICES

Our earlier report also criticized the current cost factor because it overstated cost differences and unfairly benefitted wealthier states that can afford to spend more on education. S. 1513 tries to correct this bias to some extent by reducing the range of this factor from between 80 and 120 percent of the U.S. average to between 85 and 115 percent. However, we believe that the current measure of per pupil expenditure is a poor proxy for the cost of providing chapter 1 services.

EFFORT BONUS FACTOR MAY NOT TARGET HIGH NEED STATES

The effort bonus may target more aid to states with lower concentrations of children in poverty and less to states with the highest concentrations of such children. Such targeting would be contrary to the objective of the program, which is to target more money to those places with greater concentrations of poverty and, hence, more educationally disadvantaged children.

The rationale for using an effort factor is to introduce a financial incentive into the formula for low spending states to increase their effort to adequately fund their educational systems. However, placing a floor on this factor of 5 percent less than the national average substantially reduces the impact of this incentive. Because of the 95-percent floor, a low spending state that increases its effort may get little additional benefit in the form of a larger chapter 1 grant. Similarly, by placing a 105-percent ceiling on this factor, a high spending state that decreases its effort may not have its chapter 1 grant reduced substantially.

EQUITY BONUS FACTOR MAY NOT PROVIDE INCENTIVES FOR STATE REDUCTIONS IN SPENDING DISPARITIES

Finally, the equity bonus factor, while well intended, is not likely to serve its intended purpose—as an incentive for a state to decrease in-state per pupil spending disparities—for three reasons:

(1) Chapter 1 funding is such a small portion of total school spending that it is unlikely that it will cause states to change their school aid formulas to produce smaller spending disparities.

(2) The floor placed on the factor so that it cannot be less than 95 percent substantially weakens the incentive for states to reduce per pupil spending disparities for precisely those states with the largest inequities.

(3) The restriction that the factor can be no more than 105 percent significantly reduces the penalty for states with the smallest variation in per pupil spending whose performance deteriorates.

The equity bonus may tend to target less aid to some states with larger spending disparities in per pupil funding and generally higher rates of child poverty and educationally disadvantaged children while targeting more assistance to some states with the smaller spending disparities and generally

Footnotes at end of letter.

lower concentrations of child poverty and educationally disadvantaged children. This would happen because some states with smaller spending disparities also generally have smaller economic disparities and, hence, fewer poor children.

ADDING A FUNDING CAPACITY FACTOR WOULD IMPROVE FORMULA

One way of both targeting high poverty areas and promoting greater equalization is to include a measure of county or state funding capacity in the allocation formula. For example, in our 1992 report, we recommended the inclusion of an income factor that would target localities with limited capacity to fund remedial services. Such a factor would target more—rather than less—assistance to areas with the highest concentrations of educationally disadvantaged students.

Copies of this correspondence will be provided to interested parties upon request. If we can be of any further assistance please call me on (202) 512-8403 or Jerry Fastrup on (202) 512-7211.

Sincerely,

CORNELIA M. BLANCHETTE,
Associate Director,
Education and Employment Issues.

FOOTNOTES

[1]Under S. 1513, chapter 1 is redesignated as title I.

[2]The coefficient of variation in per pupil spending is a statistical measure of the degree to which per pupil spending varies in a given state.

[3]"Remedial Education: Modifying Chapter 1 Formula Would Target More Funds to Those Most in Need" (GAO/HRD-92-16, July 28, 1992).

TARGETING CHAPTER 1 FUNDS—AN EVALUATION OF FORMULA ALTERNATIVES

BACKGROUND

The goal for funding Compensatory Education Services was established at 40 percent of state per pupil spending when Chapter 1 was authorized in 1965. This need standard is reflected in the current Chapter 1 formula which allocates federal funds in proportion to 40% of state per pupil spending.

Appropriations for Chapter 1 amount to only 35% of remedial education spending needs, leaving 65% either unfunded or at the discretion of states and local school districts to make up the funding gap.

Low-income school districts are at a funding disadvantage due to their relatively weak local tax bases. They must undertake substantially larger tax burden to meet the 40% funding goal for remedial education.

CHAPTER 1 REAUTHORIZATION ISSUES RELATED TO THE SCHOOL FINANCE EQUALIZATION ISSUE

S. 1513 brings federal policy into the school finance equalization issue by including an "equity" factor that rewards states that have low spending disparities among local school districts.

The S. 1513 equity factor is a flawed indicator of states' success in achieving equalization and should not be used because it directs limited federal resources to low-need states.

Chapter 1 funds should be allocated from the Federal government to the States using an equalizing formula that offsets the funding disadvantage of low-income schools. This can be accomplished by introducing an income factor that targets Chapter 1 funds to low-income areas.

The income factor proposed in the Bumpers/Cochran Amendment is the same type of factor most states use in allocating their school aid funding, including, for example, Massachusetts, Kansas, New York, Mississippi, and Utah.

COMPARISON OF VARIOUS FORMULA ALTERNATIVES IN TERMS OF TARGETING ADDITIONAL AID TO HIGH POVERTY STATES

Formulas Compared:

(1) Current Law
(2) S. 1513 (Committee)
(3) S. 1513: no effort (Feinstein)
(4) S. 1513: no effort or equity factor
(5) S. 1513: no bands on equity factor (Hatch)
(6) Current Law with income factor (Bumper/Cochran)

TABLE 1.—FUNDING PER CHILD IN POVERTY

Formula	13 High poverty States	13 Low poverty States
Poverty rate (percent)	23.6	11.2
Current law	$736	$902
Percent difference from current law:		
S. 1513	+0.1	+0.6
No effort or equity factor	+2.6	−2.2
Feinstein	+3.2	−0.4
Hatch	+3.9	+2.3
Bumpers/Cochran	+10.2	−6.1

Conclusions: In terms of targeting increased aid to high poverty states,

The committee formula is virtually no different from current law. Current law provides $736 per poor child to the high-poverty states and $902 per child to the low-poverty states. S. 1513 provides slightly more to both groups and, by implication, less to the states in the middle group.

The Bumpers/Cochran option is the only formula under consideration that substantially increases targeting to high-poverty areas, increasing aid to high poverty states by 10% while reducing aid to low-poverty states by 6%.

Eliminating the tax effort and equity factors from S. 1513 provides a modest increase in targeting to high poverty states (an additional 2.6%) and reduces aid the low-poverty states a modest 2.1%.

The Feinstein and Hatch proposals provide additional assistance to the high poverty states but this is accomplished by reallocating aid from the middle group of states. The Feinstein proposal reduces aid to low poverty states by only 0.4% while the Hatch proposal reallocates aid from the middle group to both high- and low-poverty states.

EQUALIZATION ACHIEVED UNDER VARIOUS FORMULA ALTERNATIVES

The tax burden local school districts would have to undertake to reach the 40% funding goal for Chapter 1 is much greater in low-income school districts. Their greater tax burden reflects the economic disadvantage they face in funding remedial services.

Under the current law formula, low-income states would have to tax themselves at rates 35% above the national average. In contrast, the low-poverty states could meet the spending goal with tax rates nearly half the national average (see table 2).

TABLE 2.—LOCAL TAX BURDENS REQUIRED TO FULLY FUND REMEDIAL SERVICES UNDER THE CURRENT CHAPTER 1 FORMULA

[U.S. average=100]

	Percent—	
	Poverty rate	Tax burden
13 High poverty States	23.6	136
13 Low poverty States	11.2	52

The goal of school finance equalization is to distribute grant funds so that all school districts are able to makeup the funding shortfall with equal tax burdens.

How equalizing a particular formula is can be determined by comparing the extent to which they offset disparities in tax burdens required to fully fund remedial education expenditures needs.

Table 3: Reduction in financing disparities under various formula alternatives compared to current law

Formula alternative:	*Disparity reduction (percent)*
S. 1513	4.0
Feinstein (no tax effort)	6.4
S. 1513 no effort or equity factors	5.6
No floor or ceiling on equity favor	5.6
Bumpers/Cochran	15.5

These results lead to the following conclusions:

All the formula options make only modest improvements in offsetting the financing disadvantage of high poverty states.

The committee formula (S. 1513) makes the smallest improvement in equalizing the allocation of chapter 1 funds, reducing tax burden disparities by just 4%.

The Bumpers/Cochran alternative makes a significant improvement, equalizing tax burden disparities 15.5%.

The G formula reduces financing disparities the most, 19.3%.

The Feinstein, LA1 (the Committee formula without the tax effort and equity factors), and the Hatch formula alternatives provide only slightly more equalization than the committee formula but considerably less than the Bumpers/Cochran alternative or the G formula.

The attached table provides information on the tax burden disparities of all 50 states.

The PRESIDING OFFICER. All time under the control of the Senator from Arkansas has expired.

Who yields time?

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator controls 1 minute and 40 seconds.

Mr. KENNEDY. I yield the remaining time to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized for up to 1 minute and 40 seconds.

Mr. SPECTER. Mr. President, I oppose the amendment offered by Senator BUMPERS and Senator COCHRAN because the committee amendment is an equitable formula. It rewards the States which have made a greater effort to fund education and it also accommodates the States with concentrations of poor people.

Frankly, I prefer the existing law to the new committee amendment because my State, Pennsylvania, does a little better under existing law.

But I oppose the Bumpers-Cochran amendment, candidly, because my State does substantially worse under the Bumpers-Cochran amendment.

Under the committee formula, contrary to what the Senator from Arkansas said, there are many of the States which are not affluent that do better

under the committee amendment than under current law—Kentucky, Louisiana, Mississippi, Arkansas, Georgia, West Virginia.

The committee amendment has been worked out after consideration, after hearings, after a great deal of thought.

There are other formulas in the wings to be offered by other Senators. These formula changes have been calculated so that their own individual States will receive more funds. If we start to remanufacture the formulas based on what does best for each of our States, we are going to end up with 50 different suggestions.

My strong recommendation to this body is to accept the committee amendment and reject the pending amendment.

Mr. DOMENICI. Mr. President, I am pleased to cosponsor the Cochran/Bumpers amendment regarding chapter 1 funding. The Chapter 1 Program is currently our largest education program we have to serve our disadvantaged students. When Lyndon Johnson created this program back in 1965, he probably never imagined it would be this large or serve as many students as it does today.

But part of the problem with the Chapter 1 Program is that it does serve so many students. And some of the students served under this program would hardly be classified as poor or disadvantaged students. Under the current formula, chapter 1 funds are going to 93 percent of all school districts, and 66 percent of all public schools.

According to a July 18, 1994 article in U.S. News and World Report, only 2 percent of the $6.2 billion we currently spend on this program go to school districts in which more than 75 percent of the students are poor. Less than half go to high-poverty areas. More alarming, the article continues, $310 million goes to school districts in which fewer than 5 percent of the students are poor.

With this in mind, I am pleased we are now taking the opportunity to ensure that we do a better job sending increasingly scarce Federal resources to the school districts that need them most—the very poor. Students who are poor are disadvantaged in more than just a financial sense. They often lag behind their peers in academic as well as social skills. Chapter 1 programs have given many students the assistance they need to achieve on a more level playing field.

The formula we have in the committee substitute does make some significant steps toward targeting chapter 1 funds toward needy students. I am pleased with some of the innovative changes in the formula, such as assigning students weights according to percentages and numbers of children in poverty, and using a cost factor—which factors into the formula a State's average per pupil expenditure—makes a good start toward ensuring funds get where they are needed most.

However, I do not believe the effort and equity factors—both of which are new elements in the formula—are accurate indicators of children in poverty to be served. That's why I am pleased to support this amendment, which uses a relative income per school age child factor. This factor is calculated by taking into consideration the county's income per child and comparing it with the national standard. Injecting this element into the formula results in Federal resources going where they are most needed by targeting those areas with higher numbers of children and lower incomes.

Mr. President, while my home State of New Mexico will receive additional funds under this alteration in the formula, I want to point out that New Mexico stands to gain under almost any change in the formula including the one in the committee substitute. Unfortunately, when funding formulas are based on poverty, as is the chapter 1 formula, New Mexico will almost always do very well. However, regardless of the amount New Mexico would receive under this formula, I feel this formula is the most equitable and fairest of any of the changes in the formula we will see before us.

I thank the Senator from Mississippi and the Senator from Arkansas for their diligence in this matter, and I am pleased to lend my support to this amendment.

THE TITLE I FORMULA

Mr. CHAFEE. Mr. President, I believe that the formula for title I allocations that is included in S. 1513 is fair. Title I provides funds to local school districts to help them to meet the educational needs of low-achieving students in poor neighborhoods. Until now, the funds were allocated, through States to the local level, based on a formula that considers the State-wide average expenditure per pupil, the number of children below the Federal poverty line, and the number of children whose families are receiving AFDC.

Under the formula proposed by S. 1513, the allocation to the States would be based on the number of poor children multiplied by the State expenditure per pupil, except that each child is assigned a weight based on county poverty rates or numbers of poor children. In other words, the higher the poverty rate, the higher the average child grant a State would receive. The new formula also considers effort and equity. These factors reward States that spend heavily on education in relation to their fiscal capacity. The title I formula is extremely complicated, but one thing is clear. The proposed formula will send a message to States that those who make education a high priority will be rewarded for doing so.

The formula in S. 1513 provides each State with at least as much as they received this year, through a hold harmless provision. So, there are no losers with this approach. As I understand it, the amendment before us would result in dramatic swings in funding that are linked entirely to regional demographics.

This afternoon, I met with three elementary school principals from my State. Each of them reported receiving substantially less funding this year then they did in years past. Under the proposed amendment, these schools would experience even greater reductions. The Bumpers-Cochran amendment would result in a loss of $1.5 million for Rhode Island's neediest children.

I oppose this amendment and urge my colleagues to do the same.

Mr. HATCH. Mr. President, I support the Bumpers-Cochran amendment to the title I formula in S. 1513.

The use of county income data as a factor to determine a State's allocation would help a lot of States in need.

I believe my colleagues have presented a commendable proposal. However, this is not the only meritorious approach to the difficult issue of school finance reform.

As my colleagues are aware, I have prepared my own amendment to the title I formula which I believe has merit as well.

Senator FEINSTEIN has circulated a proposal that is sound.

Mr. President, I believe as well that the formula in S. 1513 is a credible and valid formula.

I don't think there is only one way to go on this. The one sure way to have a formula fight is to get locked in on a specific theory or factor.

I support the Bumpers-Cochran formula because it meets my criteria for measures such as school funding formulas.

My criteria is quite simple, Mr. President.

First, the formula must be supported by sound policy that can be argued compellingly and substantively. The Bumpers-Cochran formula accomplishes this. I certainly believe my amendment achieves this and so does the formula included in S. 1513. There are legitimate points in favor of each of these ideas.

Second, the formula must be good for my state of Utah.

When the policy is solid—and I have not yet seen an amendment to this formula where the policy is not solid—then the question becomes one of how Utah fares under the formula in question.

As my colleagues will see, the Bumpers-Cochran formula does benefit Utah relative to the formula in S. 1513.

Therefore, I plan to support it.

The PRESIDING OFFICER. All time has expired.

Under the previous order, the hour of 9:30 having arrived, the question occurs on amendment 2428.

Mr. COCHRAN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The clerk will call the roll.

The assistant legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 46, nays 54, as follows:

[Rollcall Vote No. 241 Leg.]

YEAS—46

Baucus	Dole	McCain
Bennett	Domenici	McConnell
Bingaman	Dorgan	Murkowski
Bond	Exon	Nickles
Boren	Faircloth	Nunn
Breaux	Gramm	Packwood
Bumpers	Hatch	Pressler
Burns	Heflin	Pryor
Cochran	Hollings	Rockefeller
Cohen	Hutchison	Sasser
Conrad	Johnston	Shelby
Coverdell	Kempthorne	Simpson
Craig	Kerrey	Thurmond
Danforth	Levin	Wallop
Daschle	Lott	
DeConcini	Mathews	

NAYS—54

Akaka	Graham	Mikulski
Biden	Grassley	Mitchell
Boxer	Gregg	Moseley-Braun
Bradley	Harkin	Moynihan
Brown	Hatfield	Murray
Bryan	Helms	Pell
Byrd	Inouye	Reid
Campbell	Jeffords	Riegle
Chafee	Kassebaum	Robb
Coats	Kennedy	Roth
D'Amato	Kerry	Sarbanes
Dodd	Kohl	Simon
Durenberger	Lautenberg	Smith
Feingold	Leahy	Specter
Feinstein	Lieberman	Stevens
Ford	Lugar	Warner
Glenn	Mack	Wellstone
Gorton	Metzenbaum	Wofford

So the amendment (No. 2428) was rejected.

Mr. KENNEDY. Mr. President, I move to reconsider the vote.

Mr. GRAHAM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, I appreciate the cooperation that we have had during the afternoon and the early evening. It is my understanding there are two more formula amendments, Senator HATCH from Utah and Senator FEINSTEIN from California. It would be my preference, and I think Senator JEFFORDS', since we have been talking about these matters, and I think the Members are familiar with it, that we would deal with those issues this evening. Senator GREGG had an amendment just to strike existing programs which would take a short time, and then there is one further amendment that I am familiar with. That is Senator Danforth's amendment.

So we would like to try to accommodate the schedule of the leaders to move ahead. Obviously, the schedule is going to be decided by the leadership. But we are prepared to move ahead on those matters, and we would like to be able to do so with the idea of getting some resolution—I see Senator FEINSTEIN here. She was prepared to vote this evening.

Mrs. FEINSTEIN. Yes. I want a rollcall vote.

Mr. KENNEDY. Could we do that in an hour?

Mrs. FEINSTEIN. Yes. Probably, yes.

Mr. KENNEDY. Senator FEINSTEIN is prepared to agree to a time limitation and to a vote.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the majority leader, Senator MITCHELL.

Mr. MITCHELL. I ask unanimous consent that Senator FEINSTEIN now be recognized to offer her amendment; that there be a 1-hour time limitation on the amendment equally divided in the usual form; that no amendments be in order either to her amendment or to any language that may be stricken, and that upon the conclusion or yielding back of time the Senate vote on or in relation to the Feinstein amendment.

The PRESIDING OFFICER. Is there objection?

SEVERAL SENATORS. I object.

Mr. HATCH. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Utah reserves the right to object.

Mr. HATCH. It was my understanding that the Hatch amendment would go next, and I think it might resolve the matter if we do it. I am hopeful it would.

Mr. MITCHELL. How much time would the Senator like?

Mr. HATCH. I would say we can certainly do it in an hour, maybe even less.

Mr. MITCHELL. Mr. President, I put the same request except that I propose that it be the Hatch amendment as opposed to the Feinstein amendment.

The PRESIDING OFFICER. Is there objection?

Mr. WALLOP. Mr. President, reserving the right to object.

Mr. JEFFORDS. I object.

The PRESIDING OFFICER. The Senator from Wyoming reserves the right to object.

Mr. WALLOP. Mr. President, it may not occur to either the Senator from Massachusetts or Maine, but the hour is 10 o'clock, and therefore I object.

The PRESIDING OFFICER. Objection is heard.

The Chair recognizes the majority leader, Senator MITCHELL.

Mr. MITCHELL. Yesterday morning, the Senate spent nearly 3 hours in what was an unnecessary delay on the matter, and I predicted at the time that either last evening or this evening we would get to a point where we were making progress on the bill and people would say, well, it is too late to proceed. If we had been able to devote those 3 hours yesterday morning to the bill instead of the pointless delay which occurred, we might not be in this position.

Mr. President, Senators can, of course, object to any proposed agreement and can prevent votes on amendments from occurring. The only recourse which the majority leader has is to compel votes on procedural matters. I have done so only sparingly and with great reluctance and will not do so this evening.

But I will simply say to my colleagues that more than a month ago I wrote a letter to every Senator. I read the letter in this Chamber. I placed the letter in the Congressional RECORD. I advised Senators well in advance that we have a certain amount of business which we have to complete. If we continue to encounter delays during the day, then we have no alternative but to conduct our business in the evening.

What simply cannot be accepted is the circumstance where we have delays during the day and then we cannot act in the evening.

Mr. President, I will modify my request. Senator HATCH was of the impression his amendment was going to be next. So I will ask unanimous consent that Senator HATCH be recognized to offer his amendment; that there be a 1-hour time limitation on the amendment equally divided in the usual form; that no amendments be in order either to his amendment or to any language that may be stricken, and that the vote on the Hatch amendment occur at 10 a.m. on Monday.

The PRESIDING OFFICER. Is there objection to the unanimous consent request?

Mrs. FEINSTEIN. Reserving the right to object, then would I have an opportunity for my amendment?

Mr. MITCHELL. Mr. President, I further request that following disposition of the Hatch amendment, on Monday, Senator FEINSTEIN be recognized to offer her amendment under a comparable 1-hour time limitation and that upon the use or yielding back of that time the Senate vote on or in relation to the Feinstein amendment.

The PRESIDING OFFICER. Is there objection to the unanimous consent request, as modified? The Chair hears none, and it is so ordered.

Mr. MITCHELL. I thank my colleagues. The next vote will be on the Breyer nomination tomorrow, upon the completion of the time. The Hatch amendment will be debated this evening. The vote will occur at 10 a.m. Monday. Then there will be 1 hour of debate on the Feinstein amendment, and then a vote on the Feinstein amendment. I thank my colleagues.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. Under the previous order——

Mr. MURKOWSKI. Mr. President, may I address the leader?

The PRESIDING OFFICER. Under the previous order, the Senator from Utah will be recognized to offer an amendment.

Mr. MURKOWSKI. Mr. President, ordinarily Senator Jake Garn would have had this obligation, but I am not quite clear on the majority leader's statement relative to what time the vote would occur tomorrow.

Mr. MITCHELL. Under the agreement entered, debate would begin at 9 a.m. There will be 6 hours for debate equally divided. If all time is used, the vote will occur at 3 p.m. If time is yielded back, the vote will occur prior to 3 p.m. in direct proportion to the amount yielded back.

Mr. BIDEN. Mr. President, will the Senator yield?

Mr. MURKOWSKI. Mr. President, so it is the majority leader's intention then to have the last vote tomorrow no later than 3 p.m.?

Mr. MITCHELL. Well, under the order, unless unanimous consent is granted to extend the time, the vote will occur at 3 p.m., if all time is used. If all time is not used, it will occur prior to that.

So the answer is, yes, it will occur no later than 3 p.m. I hope and expect that it will occur before then. I do not believe all the time need be used, but that is up to individual Senators.

Mr. MURKOWSKI. Mr. President, the Senator from Alaska would object if the unanimous consent were asked beyond 3 p.m.

Mr. MITCHELL. I do not intend to ask it.

Mr. MURKOWSKI. I understand.

Mr. MITCHELL. It is a very regular practice for Senators to come in the Chamber and ask unanimous consent for more time, so I suggest the Senator be here and diligent during the day.

Mr. MURKOWSKI. The Senator from Alaska will be here at 3 p.m. I thank the chair.

Mr. MITCHELL. No. No, I suggest the Senator be here at 9 a.m..

Mr. MURKOWSKI. I will be here for the vote.

I thank the Chair.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware [Mr. BIDEN].

Mr. BIDEN. Mr. President, with regard to the Breyer vote at 3 p.m., I do not know what my friend, the ranking member of the committee, Senator HATCH, has determined, but to the best of my knowledge there is not the necessity of using all 6 hours. So I just want to let people know that the managers of the bill will not be offended if people do not use all 6 hours because at least two dozen of you asked me whether or not I am going to "Keep that going 'til 3 o'clock."

I am ready to vote at 9:30, and we go in at 9 a.m. So I just want you to know that anyone wishes to vote earlier, encourage your friends to just show up earlier to vote. You may all be able to leave, and we may be able to move this much more quickly.

Mr. CHAFEE. Mr. President, this week we have begun consideration of the Improving America's Schools Act, and I am pleased to be an original cosponsor. This bill provides more than $12 billion in Federal assistance to State and local educational agencies, primarily to assist children at risk—including children in poverty and children with limited proficiency in English—to attain the high academic standards being developed as a result of the Goals 2000: Educate America Act, which was approved earlier this year.

I am particularly pleased with the reauthorization of the Even Start Family Literacy Act, which I authored in 1987 and which was enacted into law as part of the 1988 Elementary and Secondary Education Act. This began as a very modest program, first authorized at $50 million. In 1992, the program was reauthorized at $100 million, and this year, we go even further by authorizing Even Start at $120 million.

Even Start provides services to children, from infants to 7-year-olds, and their families. One of our Nation's gravest challenges is the persistence of illiteracy. I introduced the Even Start Program because illiteracy tends to be passed from one generation to the next. Tragically, even parents with the best intentions tend to pass their illiteracy on to their children. Study after study indicates that children who are read to during their preschool years, learn to read more easily than children who are not read to. Children of nonreaders too often grow up to be nonreaders, and these children begin school at a distinct disadvantage.

Even Start strives to break this cycle of illiteracy by funding literacy programs directed specifically at nonreading parents and their preschool children. We all agree that parents are their children's first teachers, and that children, whose parents are involved in their education, flourish. Even Start helps parents to develop the skills needed to participate, in a meaningful fashion, in the education of their children.

The Even Start Program includes core services, such as adult literacy training, training for parents to prepare them to assist in their children's education, and early childhood education. Additional services may include child care services, testing and counseling, education of parents and their children in their own homes, and transportation. Even Start helps in our efforts to achieve three of our Nation's educational goals: Goal one "all children will start school ready to learn," goal six "every adult American will be literate * * *," goal eight "every school will promote partnerships that will increase parental involvement and participation in promoting the social, emotional and academic growth of children."

Even Start tackles the dilemma of parents who are unable to help their children succeed in school because of their own literacy problems. Imagine the anguish of parents who know they should be reading to their children, but cannot; who cannot interpret or response to notes from teachers or bulletins; and who must stand by helplessly while their children struggle to handle the challenges of school all alone. Imagine the despair of the child who gets no reinforcement at home for what he or she learns at school. Even Start attacks this problem from both sides, by assisting the child and the parent.

Funds authorized by S. 1513 for Even Start will be targeted toward teenage parents, 78 percent of whom are likely to live in poverty. Teenage parents and their children are of special concern, because too often these teen parents have no alternative but to drop out of school. Without a program like Even Start, the children of these parents would be likely to fall into the cycle of illiteracy.

In addition to the Even Start Family Literacy Program, S. 1513 reauthorizes a number of worthwhile programs that I wholeheartedly support, including the national writing project, which helps teachers to improve their writing skills and the teaching of writing skills; the Star Schools Program, which provides grants for telecommunications partnerships for distance education services in math, science, and foreign languages; the Magnet Schools Program, which has been successful in discouraging segregation; The Dropout Prevention Demonstration Program that I introduced with Senators Stafford and PELL, to identify likely dropouts and to encourage children who have failed to complete high school to return to school; The Blue Ribbon Schools Program, which authorizes the Secretary of Education to identify and reward individual schools for achieving excellence; and the Jacob Javits Gifted and Talented Program, which assists schools in providing special programs for our most talented students.

I am pleased that the Safe and Drug Free Schools Act has been reauthorized. The role of our schools has changed drastically in the past three decades, and schools have taken on extraordinary new burdens. Children of all ages, in every State across the Nation, have access to guns. When I was Governor in my State, the worst one might hear of at the schools was a fistfight. A gun incident, or shooting, was unheard of. Rhode Island is not a major urban area. Yet this year we have seen a dozen gun incidents in our schools.

What is the only route for school administrators to take? To ensure the safety of all who are in the school, administrators are forced to divert scarce funds from books to $4,000 metal detectors. In July 1992, 25 percent of the 45 largest school districts were using metal detectors; today, 69 percent are using them.

The Safe Schools Act authorizes Federal grants to school districts to fight violence in their schools. The presence of guns in schools diminishes the work of educators across the country. This bill takes steps to ensure that our heavily burdened schools are free of guns and the violence that results.

S. 1513 also encourages professional development. We have asked our Nation's schools to reach for the stars, to encourage our children to achieve high standards in every core academic area. Our teachers must be prepared to meet this challenge. The bill assists teachers in doing so by providing funds for ongoing training and teacher development.

I am particularly pleased that the committee included the Library Media and Technology Act, which I cosponsored. The technology at work in the automatic teller machines of most banks exceeds the technology present in most of our Nation's schools. This is an unacceptable situation. Our Nation is paving the way for the Information Highway and our schools must be ready to bring our students down this road.

S. 1513 encourages our schools to continue their efforts to achieve excellence and to prepare our children for the challenges of the 21st century by emphasizing programs that we know work. This bill encourages and assists local schools to develop the reforms and high standards called for in Goals 2000. So, Mr. President, I want to express my strong support for S. 1513 and urge my colleagues to do the same.

Mr. HATFIELD. Mr. President, off reservation boarding schools represent the last hope for many of the at-risk native American youth who live there. Whether emotional young people strive to succeed or fall into the path of destruction can depend directly upon the quality of individual experiences with the teachers and counselors who hold the power to shape their lives.

Many of the problems these schools face are very familiar: Alcohol and drug abuse, parental neglect, emotional suffering, and patterns of delinquency. As in any school system, without programs that meet their specific needs, at-risk youth are not adequately educated and are destined to failure. Total opening enrollment at off-reservation schools was over 2,600 students last year. But, closing enrollment was only slightly over 1,500 students. Some of the schools have dropout rates near 50 percent.

Reports analyzing these schools around the country raise many questions regarding their administration and funding. The amount spent per student at off-reservation boarding schools, such as the Chemawa Indian School in Salem, OR, varies from $10,000 to $15,000 per year. By comparison, the Oregon Department of Corrections estimates their per-inmate cost in youth institutions at $47,450 per year.

The issues here are complex and the budgets are extremely tight. But, I believe that we can not afford to overlook a 50 percent dropout rate—the social and economic costs are too high to ignore. Also, we must not forget that around 15 percent of the children in these schools are classified as gifted and talented students. How are the missions of the schools addressing their high potential for achievement?

In a recent hearing in the Indian Affairs Committee, we took a closer look at these schools. At that time, there was widespread support from administration officials and others to move toward a therapeutic school model that would be better tailored to meet the needs of these children by restructuring the residential and academic programs and enhancing the social and mental health focus of the schools.

Because some of these schools are struggling to move this direction already, I support this amendment to encourage the administration to set up demonstration programs in those schools. While I remain concerned about the lack of resources that all of these schools face, I believe that this amendment can be a step in the right direction toward ensuring that limited funds are used in the best manner possible for the well-being of these children.

The PRESIDING OFFICER. Under the previous order, the Senator from Utah is recognized to offer an amendment.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. If the Senator will permit me to obtain an agreement——

The PRESIDING OFFICER. The majority leader.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the following amendments be the only first-degree floor amendments remaining in order to S. 1513, the elementary and secondary education authorization bill; that they be subject to second-degree amendments, provided they are relevant to first degree to which offered; provided, further, that upon disposition of the amendments the bill be read a third time; and that the Labor committee then be discharged from further consideration of H.R. 6, the House companion; that all after the enacting clause be stricken and the text of S. 1513, as amended, be inserted in lieu thereof; that H.R. 6 be advanced to third reading; and the Senate then vote on passage of the bill with the above occurring without any intervening action or debate; that upon disposition of H.R. 6, the Senate insist on its amendments, request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees; and that the Senate measure then be indefinitely postponed.

The PRESIDING OFFICER (Mr. LAUTENBERG). Without objection, it is so ordered.

The text of the agreement follows:

S. 1513 (ORDER NO. 495)

Ordered, That when the Senate resumes consideration of S. 1513, to Improve America's Schools, the following amendments by the only first-degree amendments in order; that they be subject to second-degree amendment provided they are relevant to the first degree to which offered:

Biden—Crime.
Biden—Relevant.
Brown—Relevant.
Conrad—Indian Education.
Craig—Relevant.
Craig—Relevant.
Craig—Relevant.
Danforth—Same Gender Education.
Dole or designee—Relevant.
Dole or designee—Relevant.
Dole or designee—Relevant.
Dole or designee—Relevant.
Dole or designee—Relevant.
Dole or designee—Relevant.
Dorgan—Indian Education.
Dorgan—Relevant.
Dorgan-Feinstein—Gun-Free Schools.
Feinstein—Relevant.
Feinstein—Relevant.
Feinstein—Relevant.
Feinstein—Relevant.
Graham—State reimbursement.
Gramm—Crime.
Gramm—Relevant.
Gregg—Relevant.
Gregg—Relevant.
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Gregg—Relevant.
Gregg—Relevant.
Gregg—Relevant.
Gregg—Relevant.
Gregg—Relevant.
Hatch—Formula Change.
Hatch—Formula Change No. 2429.
Helms—Relevant.
Helms—Relevant.
Helms—Relevant.
Hutchison—Relevant.
Hutchison—Relevant.
Jeffords—Relevant.
Jeffords—Relevant.
Kassebaum—Relevant.
Kassebaum—Relevant.
Kennedy—Relevant.
Kennedy—Relevant.
Kennedy—Relevant.
Lautenberg—Relevant.
Lautenberg—School drivers.
McCain—Agency Requirements.
Mitchell—Relevant.
Mitchell—Relevant.

Nickles—Relevant.
Pressler—Relevant.
Pressler—Relevant.
Pressler—Relevant.
Simpson—Relevant.
Smith—Funding.
Smith—Relevant.
Stevens—Native Alaskan Education Program.

Ordered further, That debate on amendment No. 2429 shall be limited to 1 hour equally divided in the usual form, with no amendment in order thereto or to any language that it might propose to strike, and that a vote shall occur on the amendment at 10:00 a.m., Monday, Aug. 1, 1994.

Ordered further, That upon the disposition of amendment No. 2429, Senator Feinstein be recognized to offer an amendment on which there shall be 1 hour of debate equally divided in the usual form, with no amendment in order thereto or to any language that it might propose to strike, and that a vote shall occur on the amendment upon the use or yielding back of time.

Ordered further, That upon disposition of the listed amendments, the bill be read the third time and the Labor Committee then be discharged from further consideration of H.R. 6, and the Senate proceed to its immediate consideration, and all after the enacting clause of H.R. 6 be stricken and the text of S. 1513, as amended, be inserted in lieu thereof; that H.R. 6 be read the third time and a vote occur on passage, without intervening action or debate.

Ordered further, That upon the disposition of H.R. 6, the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees; and that S. 1513 be indefinitely postponed. (July 28, 1994.).

Mr. MITCHELL. Mr. President, I send the list of amendments to the desk.

I thank my colleagues, and I especially thank the Senators from Massachusetts and Vermont for their diligence in pursuing this.

And I thank the Senator from Utah for his courtesy.

Mr. HATCH. Mr. President, why do I not just put the amendment into the RECORD and the speech in the RECORD tonight so people will know what it is about, and we will spend time on it, if the Senator from Massachusetts so desires.

Mr. MITCHELL. I will proceed in whatever manner the Senator from Utah wishes.

Mr. KENNEDY. That is fine.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I would like to say we will be in session all day Monday with votes during the day and into the evening in an effort to make further progress and, hopefully, complete action on this bill on that day.

So Senators should be aware of that and plan their schedules accordingly.

I thank my colleague.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

AMENDMENT NO. 2429

(Purpose: To amend the Title I formula in S. 1513, the "Improving America's School Act of 1994")

Mr. HATCH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for himself and Mr. BENNETT, proposes an amendment numbered 2429.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Beginning on page 554 line 21, strike all through line 15 on page 556 and insert in lieu thereof the following:

(iii)(I) Except as provided in subclause (II) the equalization factor for a local educational agency shall be determined in accordance with the succeeding sentence. The equalization factor determined under this sentence shall be calculated as follows: First, calculate the difference (expressed as a positive amount) between the average per pupil expenditure in the State served by the local educational agency and the average per pupil expenditure in each local educational agency in the State and multiply such difference by the total student enrollment for such agency, except that children from low income families shall be multiplied by a factor of 1.4 to calculate such enrollment. Second, add the products under the preceding sentence for each local educational agency in such State and divide such sum by the total student enrollment of such State, except that children from low income families shall be multiplied by a factor of 1.4 to calculate such enrollment. Third, divide the quotient under the preceding sentence by the average per pupil expenditure in such State. The equalization factor shall be equal to 1 minus the amount determined in the previous sentence.

(II) The equalization factor for a local educational agency serving a State that meets the disparity standard described in section 222.63 of title 34, Code of Federal Regulations (as such section was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) shall have a maximum coefficient of variation of .10.

Mr. HATCH. Mr. President, I rise today to offer an amendment to what has become known as the equity bonus of the title I formula included in S. 1513. My amendment would treat all States equally under the equity bonus included in S. 1513. I believe, Mr. President, that an equity factor certainly is the one place to treat all States equally.

I want to begin my making it clear to my colleagues that my amendment does not change any of the other three factors that comprise the four-part title I formula. In crafting my amendment, I wanted to work within the framework established by Senators KENNEDY, KASSEBAUM, PELL, and JEFFORDS. I have been very pleased to work with my distinguished colleagues on this bill. I appreciate the hard work done by the majority and minority leaders on the full committee and subcommittee and their respective staffs. They are dedicated professionals who care deeply about improving the education of American children.

Yet, I believe this formula can still be improved.

My amendment very simply removes the arbitrary floor and ceiling that limits the overall effect of this formula factor. These boundaries have the effect of grouping States into one of three tiers, each tier having a single multiplier for the purpose of computing the formula. Each State, therefore, does not benefit individually.

I am referring to my proposed modification as an equalization factor so as not to confuse my colleagues. My amendment proposes an equalization factor that treats States equally and is based on a factor that States can control: the equal distribution of resources among local school districts in the State.

The principal measure in both the S. 1513 equity bonus and the Hatch equalization factor is known as the coefficient of variation. This is defined as the difference between the local education agencies [LEA's] within a State having the highest and lowest per pupil expenditures. This coefficient of variation [COV], according to the Congressional Research Service is widely considered to be one of the best measures of school finance disparities.

Since they say imitation is the sincerest form of flattery, let me note several ways in which the Hatch equalization factor is the same as the S. 1513 equity bonus in addition to the use of COV measure.

This measure for the average disparity in expenditures per pupil among the local education agencies of a State—meaning the COV—has accounted for differences in enrollments for these local education agencies and applies an extra weight of 0.4 for the number of poor children. This is the same as the S. 1513 formulas equity bonus.

My amendment includes a 100-percent hold harmless for the first year and caps the amount a State can gain at 115 percent. This is the same as in S. 1513.

My amendment recognizes the strain placed on particular States severely affected by a reduced tax base as a result of Federal installations and ensures that these federally impacted States are not penalized under the Hatch equalization amendment to the title I formula. This is the same as in S. 1513.

My amendment would benefit three-quarters of the States. If they haven't seen it already, I would draw my colleagues' attention to the chart I have placed in the rear of the Chamber. As my colleagues will observe, 38 of the 50 States benefit under the Hatch equalization amendment to the title I formula and four States receive the same amount of money.

It would be nice to find a formula that would benefit every State. It would certainly be my desire that every State could be a winner. But, unfortunately, the budget process notwithstanding, Congress hasn't figured out how to overcome the basic rules of mathematics. Given a specific amount of money, different formulas must produce winners and losers.

I believe, however, that the modification to S. 1513 I am suggesting pays significant dividends to education in the large majority of States while hurting the fewest possible number of States.

Mr. President, I believe this equalization factor, which treats all States equally is a solid formula for the following reasons:

First, an unequal distribution of resources denies needed resources to poor and minority children.

Some of my colleagues may argue that my equalization factor treats poor kids unfairly—that what we ought to be doing is directly targeting resources to poverty-stricken schools.

I would argue that an equalization factor is a poverty factor. I believe that the unequal distribution of resources among school districts disproportionately affects poor and minority students. One of the main goals of this reauthorization has been to target poor kids. A stronger equalization factor helps accomplish this.

A report prepared by the Policy Information Center of the Educational Testing Service, titled "The State of Inequality," concludes that,

> Thus, it can be established with national data that educational resources are unevenly distributed. It is also clear that, on average, students in poorer areas are likely to have fewer educational resources than those in wealthy areas. There are also wide variation in the effectiveness of schooling, after differences in socioeconomic status are considered.

Further studies have also determined that high-poverty and minority students have fewer opportunities to take critical gatekeeping courses in math and the hard sciences, thus preventing access to institutions of higher learning.

A report prepared for the House Committee on Education and Labor, titled, "Shortchanging Children: The Impact of Fiscal Inequity on the Education of Students At Risk" found that, "Inequitable systems of school finance inflict disproportionate harm on minority and economically disadvantaged students."

A Rand report concludes, "The most effective way to overcome the adverse effects on the disadvantaged of disparities in state and local education expenditure is to eliminate the disparities themselves."

Some would argue that equalization of resources would penalize kids in poor, urban areas, who need greater resources than kids in wealthy, safer suburban neighborhoods. As the CQ Researcher points out, however,

> * * * in the past three decades the non-academic scope of schools, especially inner-city schools, has expanded considerably. Schools now offer, among other things, special programs for handicapped and immigrant children. And the role of schools has evolved from providing instruction to children to dealing with all facets of students lives, from teen pregnancy to increasing violence. The sad fact is that in some schools, some of the increase in per-pupil spending has been for metal detectors and security guards.

The point I am trying to make here, Mr. President, is that when you differentiate expenditures for classroom resources, from expenditures for other purposes, urban schools spend far less for classroom needs.

This is why I support a weighted factor for poor kids. I completely agree that, under this formula, poverty LEA's should be given a boost.

Not only does the Hatch equalization factor retain the .4 weight for poor children that is in the S. 1513 equity bonus, but it also retains the weighted child factor as part of the four-part formula.

I should also note that my amendment proposes no change in the bill's formula that distributes title I resources within a State or the formula that allocates funds from the district to individual schools. Both of these calculations target funds to high-poverty school districts and to high-poverty areas within districts.

So, some of my colleagues are asking, if the formulas are so similar, what difference does it make.

I believe my Federal to State distribution is better than the proposal in S. 1513 because, first, equalization has been documented as a way to assist low-income LEA's, and my amendment encourages States in that direction without being dictatorial about it; and second, all States are able to capture all the benefits of their equalization efforts on an individual basis. They are not thwarted by an arbitrary cap.

The one problem with the limitations on the equity bonus in S. 1513 is that it does not permit this formula factor to do what it should do—direct State and local resources, as well as Federal, where they are most needed.

I repeat, all my amendment does is treat all States equally under the title I formula.

Second, title I is ineffective if it merely layers resources where the resources are inadequate

Title I should ideally be providing additional resources for needy children. Unless resources are equalized, one of the primary principles under which this initiative was undertaken will be lost. The layering of resources where resources are already inadequate will not meet the needs of disadvantaged children. Title I was meant to provide additional resources, all else being equal. Title I was not meant to compensate for an inadequate financial commitment to poorer LEA's on the part of States.

The purpose of Title I is to give educationally and economically disadvantaged students additional assistance: teachers, textbooks, and additional education resources. These resources were never intended to comprise the entirety of aid to an educationally or economically disadvantaged student.

However, it has recently been concluded that the chapter 1 program does not spread resources on an already even playing field. In fact, often, too often, chapter 1 is the field. Mr. President, this must change if all students are going to be successful in meeting the national education goals.

Research completed by Rand's Institute on Education and Training determined that, "The potential effectiveness of chapter 1 depends on its supplemental character, which in turn depends on equality of base expenditure across LEA's."

This report concludes that, "In sum, the present chapter 1 funding mechanism has not been designed to make Federal aid supplemental, except in the narrowest, most local sense, in the face of an inequitable system of general education finance."

These conclusions are supported by testimony delivered before the Senate Labor and Human Resources Committee on August 3, 1993. William Taylor, a Washington attorney and children's advocate, drew from the report by the Independent Commission on chapter 1 entitled, "Making Schools Work for Children in Poverty."

Finally, the failure to deal with educational inequity makes chapter 1 an inefficient program and prevents it from achieving its goals. Chapter 1 has been built on the fiction of a level playing field, that is, that Federal funds are provided as a supplement for economically disadvantaged children to an educational program that is already adequate for them. In many places, this is not the case.

Indeed, a review of the report issued by the Commission reveals that they concur on the issue that chapter 1 should supplement where resources are equal, not subsidize an unequal distribution of resources.

Mr. President, some might argue that my equalization factor should not be the only determining factor in allocating desperately needed title I funds. To them I say, I totally agree with you. The equity bonus included in S. 1513 is only one factor in a four-factor formula.

I also agree that there are many other factors which contribute to a State's ability to finance education. I wish again to remind my colleagues that all I am doing here is attempting to have States treated equally and fairly, which the three-tier grouping does not do.

Mr. President, I repeat: Economically disadvantaged and minority kids are adversely affected by the disparities in

educational financing. Title I should be used to give added resources to these economically and educationally disadvantaged kids. We need to change the status quo, and certainly the formula included in S. 1513 does that. But, by making one simple adjustment, we can make it so much more effective.

Third, failure to improve the equal distribution of resources will prevent all kids from making progress achieving the national goals for education.

The current level of inequity makes progress toward achieving the national education goals for all students unlikely, thereby preventing real educational reform.

I would like to read from the testimony presented on July 26, 1993, in the Labor and Human Resources Committee by Dr. Bob Berne, a professor at the Robert F. Wagner Graduate School of Public Service, who has studied equity in school finance for over 15 years:

* * * the current inequities in our school finance system are every much [sic] as serious a national education problem as inadequate early childhood education, overly bureaucratized schools, non-existent or low educational standards, and substandard preparation of our teaching force. In fact, if the finance inequity issues are not addressed simultaneously with these other problems, the solutions, if they can be found and implemented, will only benefit a subset of our students.

The unequal distribution of resources affects all kids. Unless we make equity a priority, then the goals we have codified for teachers, students, parents, and schools will not be realized.

Fourth a fair equalization factor will promote bottom-up education reform that will help all kids make progress towards achieving the national goals.

Real education reform must take place at the grassroots level. A series of edicts issued from Washington, DC is not going to improve education for Americans. State and local education agencies must take on this daunting challenge. This is one of the major reasons why I support having an equalization factor that treats all States fairly.

The degree to which a State equalizes funding for education is a factor that a State can control. A State that equalizes is a State that will benefit under a fair equalization factor.

Also, equalization is a factor that can be quantified. So much of what the Congress is asking the State and local education agencies to do requires a judgment based on a series of qualitative analyses. A fair equalization factor does not rely on subjective determinations.

A fair equalization factor does not rely on mandates or guidelines for how a State should achieve equalization. I, for one, would oppose a measure that specified how a State was to engage in equalization. On the contrary, I believe States are perfectly capable of figuring this out for themselves.

Fifth, including an equity factor in the title I formula could help prevent costly, time-consuming lawsuits.

On July 13, 1994, the Washington Post reported that "the New Jersey Supreme Court declared the state's method of funding public schools unconstitutional, saying that it did not go far enough in eliminating disparities in spending between rich and poor school districts. This ruling is the latest in a series of high-profile cases around the country * * *"

In its ruling the court stated unanimously that funding disparities within the State created a "separate class of students within the state * * *. 'Many [are] undereducated, isolated in a separate culture, affected by despair, sometimes bitterness and hostility, constituting a large part of society that is disintegrating.'"

Twenty-four States currently face lawsuits over the unequal distribution of resources. Washington Post, July 13, 1994. The practice of suing a State because of financial disparities has a long history, spanning over 30 years. Several States have had their school finance systems declared unconstitutional. One thing, however, is apparent: every State is vulnerable to legal challenges based on financial disparities. My point, here, Mr. President, is that this issue is not going to go away. Furthermore, I believe we are today in a position to encourage action in this area and, hopefully, to help head off unproductive and costly legal battles.

The report from the Educational Testing Service, "The State of Inequality," has concluded that:

The issue of inequality in providing public education and inequity in its financing has, for at least two decades, been framed as a legal issue debated and decided in State courthouses * * * . It is a policy issue for executive and legislative branches as well, at all levels of government.

We have an opportunity today to help address what has been called the savage inequalities that exist within our Nation's schools.

All my colleagues understand the problem. I urge them to support my amendment to help do something about it.

Mr. President, I am prepared to debate this matter for an hour on Monday then, if it is all right with the distinguished Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thank the Senator. I think in terms of the membership, I doubt if we would be able to have much of an impact on our friends and colleagues tonight. So I will look forward tomorrow morning to reading the speech with great diligence.

Mr. HATCH. I thought the Senator would. I have to say I am looking forward to it. I hope the Senator puts his speech in the RECORD so I can read it. I know it will not be nearly the debate unless the Senator from Massachusetts has an audience on the floor.

Mr. KENNEDY. Mr. President, I understand I will be able to put in some remarks in response to the statement.

Mr. President, we have been debating these issues all evening, and I doubt if there is much that we could add to the discussion tonight.

I will include in the RECORD some remarks in response to the Senator's amendment.

I understand we have been accorded time on Monday morning to debate this prior to the Senate making a judgment on it at 10 a.m. So that is the way that we will proceed. As the majority leader has indicated, we will have a full day on Monday. Hopefully, we will finish the formula amendments in the morning. Senator DANFORTH has an amendment, Senator GREGG has an amendment, and Senator GRAHAM has an amendment as well. We will plan to have a full day on Monday through Monday evening.

Again, I thank all of the membership for their courtesy and for their cooperation this evening. We look forward to completing the legislation, hopefully, on Monday and no later than Tuesday.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. FORD. Mr. President, I ask unanimous consent that there now be a period for morning business with Senators permitted to speak therein for up to 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

BRUCE BARTLETT'S COMMONSENSE ARGUMENT AGAINST TAXING CIGARETTES TO PAY FOR HEALTH CARE

Mr. FAIRCLOTH. Mr. President, as a life long farmer and businessman, I feel it is important to be honest with the American people about the hoax being played on them by supporters of funding socialized medical reform with the revenue from increased cigarette taxes. The reformers claim that their plan can be funded by jacking up the tax on cigarettes, while at the same time promoting good health by discouraging people from smoking. That doesn't make common sense. The two goals are mutually exclusive.

In North Carolina alone, 88,000 people work directly in the tobacco business;

growing it, auctioning it, or manufacturing cigarettes. North Carolina farmers sold over $1 billion worth of tobacco at auction last year. And over 150,000 North Carolinians work in jobs indirectly dependent on tobacco. According to Price Waterhouse, the proposed $.75 tobacco tax increase will put 12,676 North Carolinians out of work, in addition to thousands of others around the country.

Those people will be put out of work because consumers will smoke fewer cigarettes. Common sense tells us that any revenue derived from a product with declining consumption will itself naturally decrease over time. Unfortunately, the administration and the socialized medicine establishment deliberately avoid acknowledging that fact.

The issue, however, is honestly discussed in an article by Mr. Bruce Bartlett, "Cigarette Taxes, Smuggling, and Revenues", which appeared in the June 3, 1994 edition of Tax Notes. Mr. Bartlett, a senior fellow of the Alexis de Tocqueville Institution, makes an excellent and succinct case against relying on a tax to both reduce consumption and raise revenue. Furthermore, Bartlett relates the experience of Canada, and how that nation's cigarette taxes reached the point that organized crime stepped in and created smuggling operations rivaling those of the Prohibition era in the United States.

Mr. President, I ask unanimous consent that Mr. Bartlett's article be entered into the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

CIGARETTE TAXES, SMUGGLING, AND REVENUES

(By Bruce Bartlett)

I. INTRODUCTION

In 1993, President Clinton asked Congress to raise the tobacco excise tax by 75 cents per pack of cigarettes to help fund his national health insurance program. More recently, a congressional subcommittee has proposed an even larger increase of $1.25 per pack, also to fund health insurance. Meanwhile, a number of states, such as Maryland, are proposing increases in state tobacco taxes as well.

Although these proposed cigarette tax increases largely are being fueled by antismoking concerns about the impact of smoking on health, they are also driven by fiscal necessity. Increased cigarette tax revenues would fund 17 percent of the Clinton health plan, for example. And throughout the United States, tobacco taxes are an important element of state budgets. However, because higher cigarette taxes are motivated by contradictory motives, there is some question as to what the appropriate tax burden on tobacco should be.

On one hand, those who favor the ultimate abolition of smoking clearly would favor the highest tax rate possible, regardless of the revenue effect, to encourage as many people as possible to quite smoking. On the other hand, fiscal requirements would suggest a moderate tax rate to minimize any reduction in cigarette sales and raise maximum revenue. Thus, the fiscal and nonfiscal goals of tobacco taxation are in conflict with each other.

The purpose of this paper is to review some of the economic issues related to tobacco taxation in the interest of furthering public debate on this important question.

II. BACKGROUND

Contradictory actions regarding the regulation of tobacco are nothing new. As early as 1621, the British Crown had forbidden the American colonies from exporting their tobacco anywhere except to England. The purpose was to keep down prices for colonial tobacco and allow the mother country to capture high profits by reselling it on the world market. However, the low prices discouraged colonial production and caused great hardship among tobacco growers. So, to mitigate the effects of the English monopoly on the purchase of colonial tobacco, in 1625 the Crown further ordered that only American tobacco could be sold in England, thus excluding Spanish and Portuguese tobacco from the British market, and forbid the growing of tobacco in England.

We thus see an early example of how the Crown's merchantilist desire to enrich England at the expense of the colonies was frustrated by the actions of the colonists, requiring the Crown to introduce a subsidy, in the form of a monopoly on sale in the British market, to offset the burden that had been imposed on the colonists.

A. First Tobacco Taxes

In 1685, England imposed an import tax on tobacco for the first time. Subsequently, the rate was increased to such an extent that smuggling became a serious problem. In fact, by the early 1800s, revenue from tobacco taxes was falling even though population and consumption were rising. In 1826, however, a legislative drafting error caused the tobacco tax to be cut by 25 percent. The effect was to so reduce smuggling that revenue from the tobacco tax actually increased.

The possibility that tax or tariff rates might be so high as to reduce their revenue yield had been noted by Jonathan Swift as early as 1728:

I will tell you a secret, which I learned many years ago from the commissioners of the customs in London: They said, when any commodity appeared to be taxed above a moderate rate, the consequence was to lessen that branch of the revenue by one half; and one of those gentlemen pleasantly told me, that the mistake of Parliaments, on such occasions, was owing to an error in computing two and two to make four; whereas in the business of laying heavy impositions, two and two never make more than one; which happens by lessening the import, and the strong temptation of running such goods as paid high duties.

By 1776, Swift's observation had been endorsed by Adam Smith, who wrote in "The Wealth of Nations":

"The high duties which have been imposed upon the importation of many different sorts of foreign goods, in order to discourage their consumption in Great Britain, have in many cases served only to encourage smuggling; and in all cases have reduced the revenue of the customs below what more moderate duties would have afforded. The saying of Dr. Swift, that in the arithmetic of the customs two and two, instead of making four, make sometimes only one, holds perfectly true with regard to such heavy duties."

The founding fathers also were concerned about this problem. In the "Federalist Papers," Alexander Hamilton wrote extensively about how high taxes and import duties encourage smuggling, to the detriment of the Treasury's revenue. In Federalist No. 22, for example, Hamilton said, "If duties are too high, they lessen the consumption; the collection is eluded; and the product to the treasury is not so great as when they are confined within proper and moderate bounds." In Federalist No. 35, he wrote, "Exorbitant duties on imported articles would serve to beget a general spirit of smuggling; which is always prejudicial to the fair trader, and eventually to the revenue itself."

B. Sumptuary Laws

Despite the negative impact that high tax rates have often had on revenues, such taxes have continued to be imposed throughout time because they also serve a nonrevenue purpose: to control behavior. In this respect, the tax laws are often akin to sumptuary laws, which have existed since immemorial to regulate the consumption of various commodities. In medieval times, these laws could be extremely detailed, strictly regulating such things as clothing according to one's precise rank in society. Then, as now, such laws were often justified by the need to protect the lower classes from wasteful extravagance or other evils. Today, taxes on alcohol and tobacco are often called sumptuary taxes for this same reason.

In the 20th century, the desire to control individual behavior and prevent the consumption of commodities deemed harmful has often taken the form of outright prohibitions. The best example of this is the federal prohibition between 1920 and 1933 on the sale or distribution of alcohol. Today such outright prohibitions are largely confined to narcotics, such as heroin and cocaine. However, taxes can also be used to prohibit consumption. Hugh Dalton explains how:

"If, as the rate of a particular duty is increased, the revenue yielded increases, the duty is predominantly a tax. But when the rate is increased above the point at which the yield in revenue is a maximum, it is clear that some element of penalty is present, and we finally reach a duty of prohibitive amount, whose yield is very small or non-existent. This is closely akin to a simple prohibition of production or importation, with a penalty for infraction."

C. Prohibition

Prohibition, however, was a total failure. Although motivated by the same genuine concerns about health and public safety that today motivate concerns about smoking, the effort to prohibit alcohol consumption altogether proved to be too costly for society to bear. In particular, Prohibition gave rise to a massive increase in crime. Among the reasons for this increase are the following:

Despite Prohibition, millions of Americans still desired to obtain alcoholic beverages.

Because such beverages could no longer be produced legally by legitimate producers and because of higher costs associated with illegal production, prices for alcohol increased sharply.

Higher profit margins led new producers to enter the industry, leading established firms to use violence to protect their market share.

Such profits also drew many ordinary citizens into criminal activity simply because of their desire to consume alcohol.

Wide public acceptance of alcohol consumption, high profits, and criminal organization eventually led to corruption of public institutions, including the police and the courts.

In short, Prohibition led directly to an increase in crime. This fact is shown graphically in Figure 1, which shows the homicide

rate before and after Prohibition.[1] As one can see, the onset of Prohibition before World War I caused a sharp increase in murders. Within a few years of the repeal of Prohibition, however, the homicide rate had dropped as sharply as it had risen. This strongly suggests that Prohibition itself, for the reasons outlined above, was the direct cause of increased crime.

III. CIGARETTE BOOTLEGGING

As noted earlier, taxes can act like prohibitions when they raise prices to such an extent that they discourage consumption and reduce tax revenues to below what more moderate rates would bring in. Cigarette taxes have long been known to have such an effect. In particular, the fact that state taxation of cigarettes varies greatly from state to state has given rise to organized cigarette bootlegging—buying cigarettes in low-tax states for resale in high-tax states. As Table 1 illustrates, the range of tax rates between high- and low-tax states can be as much as 63.5 cents per pack (between Virginia and the District of Columbia). Moreover, as in the case of Virginia and D.C., there are often wide variations in tax rates between contiguous jurisdictions, thus making bootlegging an easy crime to commit.

Table 1.—State Cigarette Tax Rates (cents per pack)

State	Tax
District of Columbia	65.0
Hawaii	60.0
New York	56.0
Washington	54.0
Massachusetts	51.0
Minnesota	48.0
Connecticut	47.0
Illinois	44.0
North Dakota	44.0
Rhode Island	44.0
Texas	41.0
New Jersey	40.0
Wisconsin	38.0
Oregon	38.0
Maine	37.0
California	37.0
Maryland	36.0
Iowa	36.0
Nevada	35.0
Nebraska	34.0
Florida	33.9
Arkansas	31.5
Pennsylvania	31.0
Alaska	29.0
Utah	26.5
Michigan	25.0
New Hampshire	25.0
Ohio	24.0
Delaware	24.0
Kansas	24.0
Oklahoma	23.0
South Dakota	23.0
New Mexico	21.0
Colorado	20.0
Louisiana	20.0
Vermont	20.0
Montana	18.0
Mississippi	18.0
Arizona	18.0
Idaho	18.0
West Virginia	17.0
Missouri	17.0
Alabama	16.5
Indiana	15.5
Tennessee	13.0
Georgia	12.0
Wyoming	12.0
South Carolina	7.0
North Carolina	5.0
Kentucky	3.0
Virginia	2.5

Source: Tobacco Institute.

A 1977 report from the Advisory Commission on Intergovernmental Relations indicated that cigarette bootlegging was one of the fastest rising crimes in the U.S. Among the reasons:

Cigarettes are relatively easy to handle and transport, and smuggling them across open borders is difficult to detect.

Penalties for cigarette bootlegging are generally light and are not an effective deterrent to bootleggers.

Cigarette bootlegging is not a federal offense and the interstate nature of the problem hampers state and local law enforcement efforts.

Potential profits in cigarette bootlegging are so great that a wide variety of people are attracted to this illegal activity.

Because of the high profit potential, organized crime has become heavily involved in bootlegging.

The ACIR concluded that high-tax states were losing $391 million per year in revenue due to cigarette smuggling (equivalent to $540 million today).

Other research confirmed the growth of cigarette smuggling. A study of tax evasion by economists Carl Simon and Ann Witte found that in 1975 cigarette smuggling netted between $100 million and $200 million. New York was a major market for bootlegging, with smugglers netting $30 million to $50 million in that state alone. The magnitude of such losses even led to a major effort in New York to cut the cigarette tax specifically to reduce crime. Supporters of the effort estimated that state and local governments combined were losing $100 million per year due to smuggling and that organized crime was earning $1.5 million per week in the process. In an editorial, The New York Times backed the proposal, arguing that it might even lead to an increase in tax revenue:

Moved by pure greed, the state has raised the tax on cigarettes so high * * * that half the smokers in New York City buy bootlegged cigarettes, usually without knowing it. The money that should flow as tax payment to government goes instead into the pockets of well-organized criminals and their truck-driving colleagues. * * * Since the state's present taxes took effect in 1972, revenue from cigarette taxes has dropped far below estimates even though smoking has not. The difference is so great that a reduction in the tax rate to put the smugglers out of business would probably produce greater income for the state. It is estimated that a 9-cent reduction in the tax would take the profit out of smuggling and stimulate the growth of normal, tax-paying patterns of distribution. It would also, in time, end the threat of gangster control of large parts of the cigarette business.

Although passage of a federal law against interstate cigarette smuggling in 1978 (Public Law 95-575) has reduced bootlegging, it remains a serious problem.

IV. INTERNATIONAL EXPERIENCE

The recent experiences of Europe and Canada illustrate the potential for tax differentials to stimulate smuggling on a massive scale when tax rates get too far out of line. In Europe, this resulted from the elimination of all tariffs among members of the European Community starting on January 1, 1993. With the elimination of all tariffs, different rates of domestic sales taxes—especially value added taxes (VAT)— took on new economic significance. It was now easier than it had ever been before to drive across national borders to buy goods at a lower tax rate than that in one's own country. Indeed, entrepreneurs quickly set up retail operations just across borders, catering to those seeking such tax bargains.

A. Canada

The experience of Canada is even more dramatic. Owing to imposition of a VAT in 1991, as well as higher rates on tobacco, the price differential between Canadian cigarettes and those sold in the United States rose to over $35 (Canadian) per carton. Organized, as well as casual, smuggling skyrocketed. According to an industry-sponsored study, one in nine cigarettes smoked in Canada in 1991 had evaded Canadian taxes. As a result, Canadian governments lost approximately $1 billion (Canadian) in revenue that year alone. The study also noted that consumption of contraband cigarettes was increasing rapidly and that such smuggling was giving rise to a vast criminal network, to which ordinary people were turning a blind eye. The study concluded:

Many ordinary Canadians feel no compunction about breaking tax-related law. Canadians now wink at cigarette smugglers the same way Americans did at bootleggers in the 1920s. Smokers and non-smokers alike not only feel the high taxation rates on tobacco products are unfair, but have now engaged in the smuggling of tobacco solely for profit with little regard for the law and law enforcement officers. As long as the disparity in prices between Canada and the U.S. exists, smuggling organizations will become increasingly more sophisticated to avoid detection from the authorities. Once these organizations become established and, from our intelligence they have indeed become so, it becomes virtually impossible to dismantle them. As we have reported, commercial smugglers have merely adapted their operations to maintain the flow of supply to their distributors. Unless prices are substantially reduced, it appears Canada's tobacco smuggling problem will not disappear.

Among the major smuggling networks are the Mohawk Indians, whose reservation straddles the New York/Canada border, and who may be responsible for half of all contraband cigarette sales in Canada. (The Mohawks also do a healthy business selling contraband cigarettes in New York.) Fishermen are another major source of bootleg cigarettes. And, of course, organized crime is heavily involved. Canadian police have identified Asian gangs known as Triads as being especially active in cigarette smuggling. The use of violence in their activities is commonplace. The mayor of the border town of Cornwall, Ontario, was even forced into hiding recently due to threats on his life from organized crime, after launching a campaign against cigarette smuggling.

Interestingly, the original source of most contraband cigarettes is Canada itself. Legitimate cigarette manufacturers, who produce cigarettes specially for the Canadian market, have lately been exporting cigarettes to the United States in large numbers. In just the first seven months of 1993, Canada exported 9.7 billion cigarettes to the U.S.—an 88-percent increase. Since there is no apparent demand for Canadian cigarettes in the United States, the presumption is that virtually all of these cigarettes were ultimately smuggled back into Canada.

B. Smuggling Encourages Tax Evasion

By the end of 1993, the Canadian government was becoming alarmed by the extent of

[1] Figure 1 not reproducible in the RECORD.

cigarette tax evasion, which was contributing significantly to its fiscal problems. Said Canadian Finance Minister Paul Martin, "More and more people consider it acceptable not to pay taxes." In December, Canada's Minister of National Revenue, David Anderson, suggested that perhaps the tobacco tax rate ought to be cut so as to reduce smuggling. "Tobacco taxes have gone up so sharply in the last three or four years that people feel it is very much an overtaxed commodity," he said.

In January, opposition to high cigarette taxes went beyond passive tax evasion and developed into a political revolt. On January 24, 75 store owners in the border town of St. Eustache, Quebec, who had seen their sales and profits suffer as a result of smuggling, began selling contraband cigarettes at cut-rate prices, in open defiance of the police. A large crowd turned out to buy the cheap cigarettes and to protest Canadian taxes.

Such blatant defiance of the law is unusual in Canada and government leaders were becoming alarmed. In particular, there was concern that cigarette tax evasion was having a spill-over effect, leading to evasion of other taxes as well. It was noted that since imposition of the VAT in 1991 use of cash in the economy had surged, which is often a sign of a growing underground economy, where cash, rather than checks or credit cards, is the preferred medium of exchange. Tax evasion was said to be rampant in certain businesses, such as home renovation, where such evasion could cut costs by up to 50 percent. A poll found that one in four Canadians considered tax evasion to be acceptable, and 30 percent saw nothing wrong with smuggling.

Finally, in February, the government decided to cut the cigarette tax by $5 per carton and also enacted measures to encourage the provinces to cut their cigarette taxes as well. At the same time, an $8-per-carton tax was levied on cigarette exports to discourage round-tripping, and the corporate tax rate was increased for tobacco companies. The tax on cigarettes in Quebec was expected to fall from $44 per carton to $23. Combined with the proposed increase in U.S. tobacco taxes, this action is expected to sharply reduce the profit incentive in smuggling cigarettes across the Canadian border.

V. CONCLUSION

The lessons of history and foreign experience make it clear that there is a limit to excise taxation. When rates get too high they simply lead to smuggling and tax evasion. They may even reduce government revenue to below what more moderate rates might raise. The prime beneficiary is organized crime.

It is difficult to say whether President Clinton's proposed 75-cent-per-pack increase in the federal cigarette tax would have the kind of impact that higher cigarette taxes had in Canada. Obviously, purchasing cheaper cigarettes in Canada is not a viable alternative. However, one should not underestimate the ingenuity of the American people in evading taxes—there is already an underground economy in the United States of probably 10 percent of GDP, some $600 billion per year. And the failures of our nation's wars on alcohol in the 1920s and on drugs more recently do not inspire confidence that governments effectively can prevent people from evading cigarette taxes if rates are set too high.

While it is true that most other countries tax cigarettes more heavily than does the United States, even with President Clinton's proposed increase, it should be remembered that rates charged do not necessarily correspond to rates paid. Especially in developing countries, virtually all economic activity takes place in the underground economy. High statutory tax rates on incomes and commodities simply are not paid. Thus, comparisons between the United States and other countries in this regard are not necessarily meaningful.

The effectiveness of a given tax to accomplish its objective may also be related to the question of fairness. If it were believed that the government was unfairly picking on smokers just because smokers are politically vulnerable, many nonsmokers would sympathize with their plight and look the other way at efforts to evade cigarette taxes. Sympathy for smokers by nonsmokers may also result from the fact that tobacco taxes are extremely regressive, taking far more out of the pockets of those with lower incomes than those with high incomes, as indicated in Table 2.

TABLE 2.—TOBACCO EXPENDITURES AS A SHARE OF INCOME, 1991

Quintile	Average income	Tobacco expenditures	Percent
Lowest	$5,981	$181	3.0
Second	14,821	274	1.8
Third	26,073	310	1.2
Fourth	40,868	339	0.8
Highest	81,594	285	0.3

Source: Bureau of Labor Statistics, Consumer Expenditure Survey.

Given that many people will not quit or reduce smoking in response to higher taxes, the effect of such taxes will be to reduce their real incomes, leaving them less money to spend on food, shelter, and other necessities, for themselves and their dependents. It thus is quite possible that higher cigarette taxes could lead to suffering and depravation among many innocent nonsmokers, such as dependent children. For these reasons, one can be opposed to higher taxes on tobacco products without necessarily endorsing smoking.

There is also the question of revenue. As noted at the beginning of this article, the sumptuary effect of tobacco taxes is clearly in conflict with their revenue purpose. Insofar as such taxes reduce smoking, they reduce tax revenue as well. The most recent evidence indicates that a permanent 10 percent increase in the price of cigarettes reduces consumption by 4 percent in the short run and 7.5 percent in the long run. (The difference is mainly due to the impact on young people who are discouraged from taking up smoking in the first place.) Thus, both the Clinton administration and the Congressional Budget Office have forecast that cigarette tax revenues will rise by about half of the percentage increase in the cigarette tax rate.

Meanwhile, a number of states have found that recent increases in cigarette taxes have failed to raise as much revenue as anticipated. Although this may partly be due to more aggressive antismoking campaigns, bootlegging has also been cited by state tax officials as a major factor. California officials are especially concerned about an increase in smuggling across the Mexican border, where seizures of cigarettes have increased by 887 percent since 1991; smuggling accelerated after a tripling of the state cigarette tax in 1989. And this was before passage of the North American Free Trade Agreement (NAFTA), which presumably will make cross-border cigarette smuggling easier. Interestingly, many of the cigarettes seized are not Mexican brands, as had been the case earlier, but American brands that previously had been exported to Mexico.

In conclusion, there are strong reasons for being cautious about raising cigarette excise taxes. Bootlegging is already a serious problem at the state level and a 75-cents or $1.25-per-pack increase in the federal tax on top of already high state rates may only stimulate more of this activity. Moreover, the potential for cross-border smuggling between the Mexico and the United States cannot be dismissed casually, given the recent experience of Canada and the passage of NAFTA. In the end, not only will revenues suffer, but we could see spillover effects in the form of increased crime and its attendant violence and an increase in overall tax evasion. Higher cigarette tax revenues thus may be offset by lower revenues from other taxes.

NOW IS THE TIME FOR THE LAW OF THE SEA CONVENTION

Mr. PELL. Mr. President, tomorrow, July 29, will be a historic day. In New York, the U.S. Ambassador to the United Nations—Madeleine Albright—will sign an Agreement that will bring our country closer to a major bipartisan foreign policy goal: the conclusion of a widely acceptable Convention on the Law of the Sea. The Agreement was adopted today in the General Assembly by a vote of 121 nations in favor, none opposed; 7 countries abstained.

The signing of the Agreement also brings me a large measure of personal satisfaction; U.S. oceans policy has been a major interest of mine throughout my Senate career. In September 1967, I introduced the first in a series of resolutions related to oceans policy issues. That resolution, Senate Resolution 172, called for the negotiation of a treaty that would extend the international legal order for the oceans beyond the then-existing international regime. At the time, I was particularly concerned about the possible appropriation of the resources of the seabed floor by other nations or groups of nations as well as the possible deployment of weapons of mass destruction on the seabed floor.

I amplified these views further in November of the same year in Senate Resolution 186. That resolution laid out specific principles to govern the activities of states in the exploration and exploitation of ocean space.

In addition to presaging the Law of the Sea Convention, these resolutions, and related measures that I introduced, led to the negotiation of the Seabed Weapons Convention which forbids the emplacement of weapons of mass destruction on the seabed floor. In essence, this reversed the normal treaty making process by instructing the executive branch on the parameters of a treaty to be negotiated. Although little known, I believe that this Convention was extraordinarily significant, shutting down one potential avenue for the U.S.-Soviet arms race which in the late 1960's and early 1970's was particularly intense.

When formal negotiations on a new Law of the Sea Convention began in 1973, I participated as frequent Senate observer, following them through their conclusion in 1982 and the Reagan administration's announcement that the United States would not sign the Convention because of concerns over part XI of the Convention relating to deep seabed mining.

Now, more than a decade later, the Convention will enter into force on November 16, 1994, since the requisite 60 countries have already ratified. With the signing of the Agreement modifying the deep seabed mining provisions of part XI in New York, our country is in a position to reap the many benefits offered in the Convention. Without this Agreement, the Convention would enter into force in November, leaving the United States and other industrialized countries outside of this important regime. With this Agreement, the principles of the Law of the Sea Convention will be universally applied by developed and developing countries alike.

This is fully consistent with past U.S. policy. In 1980 in the Deep Seabed Hard Minerals Act, the Congress stated that:

(I)t is in the national interest of the United States and other nations to encourage a widely acceptable Law of the Sea Treaty, which will provide a new legal order for the oceans covering a broad range of ocean interests, including exploration for and commercial recovery of hard mineral resources of the deep seabed.

In 1982, the Reagan administration announced that it was prepared to support ratification of the Convention, provided that its concerns with part XI could be resolved. Unfortunately, the administration was not able to achieve the changes that it had sought in time for the United States to sign the Convention. As a result, neither the United States nor the other industrialized countries signed the Convention.

During the Bush administration, with the prospect that the Law of the Sea Convention would enter into force, however, informal consultations were begun at the United Nations with the aim of resolving concerns with part XI.

This aim appears to have been achieved. Indeed, a large number of developed countries have indicated their intention to sign the agreement as have a number of developing countries. The way should now be open for the United States to become a party to the Law of the Sea Convention. I ask unanimous consent that a paper describing the manner in which the objections of the United States to the original provisions of part XI pertaining to the deep seabed mining regime be included in the RECORD at the conclusion of my remarks.

There are numerous benefits for the United States in the Convention.

First and foremost, the Convention will enhance our national security. The Convention establishes as a matter of international law freedom of navigation rights that are critical to our military forces. A letter from Secretary of Defense William Perry and Secretary of State Warren Christopher states:

As one of the world's major maritime powers, the United States has a manifest national security interest in the ability to navigate and overfly the oceans freely.

A study by the Department of Defense and the Joint Chiefs of Staff found that U.S.:

* * * national security interests in having a stable oceans regime are, if anything, even more important today than in 1982 when the world had a roughly bipolar political dimension and the U.S. had more abundant forces to project power to wherever it was needed.

I would emphasize that these are not my judgments, but the judgments of the professionals whose job it is to ensure our Nation's security.

I have heard some arguments that the Convention's provisions on freedom of navigation are not really important because they already reflect customary international law. I strongly disagree with that argument. It rests our national security on the shifting sands of customary international law.

Customary international law is inherently unstable. Governments are likely to be less scrupulous about avoiding new precedents under customary law than they are about avoiding such actions in violation of a treaty. Moreover, not all governments and scholars agree that all of the critical navigation rights protected by the Convention are also protected by customary law. They regard many of those rights as contractual and, as such, available only to parties to the Convention.

I would note for example, that it was not long ago that the United States claimed a territorial sea of only 3 miles. Now it is 12. I am certain there are countries that would like to expand their territorial sea even further. Only the Convention establishes limits on countries, claims to territorial seas and for that matter exclusive economic zones or EEZ's as a matter of international law.

These navigational rights are of very real importance to our Armed Forces. There have been recent situations where even U.S. allies denied our Forces transit rights in times of need. For example, during the 1973 Yom Kippur war our ability to resupply Israel was critically dependent on transit rights through the Strait of Gibraltar. Again, in 1986, U.S. aircraft passed through the strait to strike Libyan targets in response to that government's acts of terrorism directed against the United States.

I do not doubt that, if necessary, the U.S. Navy will sail where it needs to to protect U.S. interests. But, if we reject the Convention, preservation of these rights in nonwartime situations will carry an increasingly heavy price for the United States. By remaining outside of the Convention, the United States will have to challenge excessive jurisdictional claims of states not only diplomatically, but also through conduct that opposes these claims. A widely ratified Convention would significantly reduce the need for such expensive operations. It would also afford us a strong and durable platform of principle to ensure support from the American people and our allies when we have no choice but to confront claims we regard as illegal.

The Convention's provisions on freedom of navigation are also vitally important to the U.S. economy and the thousands of U.S. workers whose jobs are dependent in some way on exports and imports. We live in an interdependent world and 80 percent of trade between nations in this interdependent world is carried by ship.

Oil is one example of this. In 1993, 44 percent of U.S. petroleum products supplied came from imported oil. This oil was carried on tankers that pass through straits, territorial waters, and exclusive economic zones of other nations on a daily basis. The United States has a vital interest in the stability of the international legal order that serves as the basis for this commerce. It also has an interest in avoiding higher prices for consumers and job losses that can result from costly coastal state restrictions on navigation. Universal adherence to the Law of the Sea Convention would provide the predictability and stability which international shippers and insurers depend upon in establishing routes and rates for global movement of commercial cargo.

The benefits of the Convention extend to many other areas. Protection of submarine cables is one example. The new fiber optic cables that connect the United States to other countries are crucial for international communications and our increasingly information-based economy. These cables are enormously expensive. A new fiber optic cable connecting the United States to Japan can carry up to one million simultaneous telephone calls, and is valued at $1.3 billion. The total value of existing cables is measured in the many billions of dollars. When these cables are broken, U.S. companies, and ultimately U.S. consumers, incur huge repair costs. The Convention contains new provisions that strengthen the obligation of all states to take measures to protect the cables and cable owners.

The Convention also provides a framework within which to address many of the pressing fisheries and marine environmental challenges we face

today. It establishes firm and enforceable duties to protect the marine environment and to ensure the conservation of living resources, including marine mammals and high seas fisheries.

Mr. President, the Convention contains many other benefits. I hope that the Convention and the Agreement will be transmitted to the Senate for its advice and consent this fall and that we can have hearings in the Committee on Foreign Relations early next year. Those hearings will provide an opportunity to explore the Convention in depth.

Mr. President, I would like to turn for a moment to an issue that is of importance to the Senate as an institution. Since there is insufficient time before November 16, 1994—the date the Convention enters into force—to bring the Agreement into force, the Agreement states that it shall be applied provisionally from November 16, 1994, until its entry into force. Provisional application shall terminate on November 16, 1998, if it has not entered into force by that date.

Concern has been raised that provisional application undercuts Senate prerogatives. This is obviously an issue of great importance for the Senate and one to which I have devoted some thought. Certainly I do not want to see the prerogatives of this institution encroached upon, even if it is for a cause that I support.

That being said, I believe that provisional application of the Agreement in acceptable in this instance.

I would note at the outset, that the concept of provisional application of an agreement is not new. There is precedent for provisional application of agreements in the United States. Moreover, article 25 of the Vienna Convention on the Law of Treaties specifically provides for provisional application of agreements.

Most important in this instance is that the United States will apply the Agreement in accordance with existing laws and regulations. I want to emphasize that point. Existing legislation provides sufficient authority to implement likely U.S. obligations under the Agreement during the period of provisional application. No new obligations will be assumed by the United States beyond those authorized by U.S. law. Only the Agreement will be provisionally applied, not the Convention as a whole.

The fundamental purpose for provisional application is to prevent the older more onerous version of part XI from automatically entering into force on November 16, 1994, with the rest of the Convention.

Provisional application will allow the United States to advance its seabed mining interests by participating in the International Seabed Authority from its inception. The new Agreement gives the United States considerable influence over such decisions, which will be lost if the United States cannot participate.

Further, without provisional application, the modifications made by the Agreement could only come into force in accordance with the cumbersome amendment procedures contained in the Convention itself. Those procedures could prevent those modifications from ever from coming into force.

Mr. President, this has been a rather lengthy presentation, but this is an issue about which I feel very strongly. I believe this Agreement and the underlying Convention—both the culmination of efforts by Democratic and Republican administrations—contains substantial benefits for our country. We stand on the threshold of a new era in oceans policy. In that era U.S. national interests in the world's oceans will be protected as a matter of law. This is a success of U.S. foreign policy that will redound to our Nation's benefit—and to the world—in the decades to come.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MODIFICATION OF THE DEEP SEABED MINING PROVISIONS OF THE LAW OF THE SEA CONVENTION

Part XI of the Law of the Sea Convention—relating to deep seabed mining on the high sea—was one of the most contentious issues discussed during the negotiations of the Law of the Sea Convention and the issue that ultimately led the Reagan Administration to decide not to sign the convention. The Bush and Clinton Administrations shared the Reagan Administration's concerns with Part XI. However, in 1989, then-U.S. Ambassador to the United Nations, Thomas Pickering was authorized by the Bush Administration to investigate developing countries' willingness to discuss changes to Part XI. This began a series of informal consultations under the auspices of the U.N. Secretary General.

The consultations, which concluded on June 3, 1994 in New York, made significant progress in meeting United States objections, as well as those of other industrialized countries, with respect to the deep seabed mining provisions of Part XI of the Convention. It is anticipated that an agreement modifying Part XI will be adopted by the United Nations General Assembly on July 27-28 and open for signature on July 29, 1994. Secretary Christopher has informed the Senate that the United States will sign this Agreement on July 29 and transmit it and the Convention to the Senate for its advice and consent at the end of the 103rd Congress.

PREVIOUS OBJECTIONS TO THE DEEP SEABED MINING REGIME

The 1982 seabed mining regime of the Convention failed to provide the United States, and other states with major economic interests that would be affected by deep seabed mining, a voice commensurate with those interests. It was based on principles for the organization of economic activity that would have interfered with market forces and effectively preempted private investment in deep seabed mining. Consequently the 1982 regime would have impeded access to deep seabed resources when market conditions warranted their development.

In order to carry out Part XI, the Convention established the International Sea Bed Authority (the "Authority") as the international body chartered to organize and control seabed mining. The Authority included the following subsidiary bodies: an Assembly, made up of all States Parties to the Convention, to establish general policies for the Authority, a 36 member Council as the executive organization, a Secretariat to support the operation of the Convention; and "the Enterprise" to be the commercial operating arm of the Authority. The Authority, through the Council, had broad powers to regulate deep-sea bed mining.

The specific problems with the 1982 seabed mining regime identified by the Reagan, Bush and Clinton Administrations fell into two broad categories: institutional issues; and economic and commercial issues. Institutionally the U.S. had objected to the fact that it was not guaranteed a seat on the Council of the International Seabed Authority. It also objected that developing countries would dominate the organization by virtue of their numbers and the voting rules, including the relationship between the Council and the Assembly.

On the economic and commercial front, the U.S. objected to the requirement that commercial enterprises, as a condition to the awarding of mining rights, had to transfer their mining technology to either a competing operating arm of the seabed authority known as the Enterprise, or possibly to developing countries. The U.S. also objected to the Enterprise benefiting from discriminatory and competitive advantages over other commercial enterprises through funding of its initial operations by state parties via loans and loan guarantees, and by a 10-year holiday from paying royalties. Additionally, objections were raised to the regime's production control arrangements which limited the level of the production from the seabed in order to protect land-based producers of the minerals that would be produced from the seabed. Finally, the U.S. objected to the regime's onerous system of financial payments that would be owned by commercial miners, in particular a U.S. $1 million annual fee payable beginning with the exploration stage.

In addition the U.S. objected to the fact that the Convention's provisions could be amended thereby binding the U.S. without its consent. The U.S. also objected to the possibility that future revenues from deep seabed mining might be distributed to liberation movements.

HOW UNITED STATES OBJECTIONS HAVE BEEN RESOLVED

The Agreement concluded in the Secretary General's consultations in New York on June 3, 1994 will provide the United States and other industrialized countries influence commensurate with their interests: it will ensure that free market principles govern the administration of the resources of the deep seabed; it will recognize claims to seabed mine sites established on the basis of exploration work already conducted by U.S. and other companies; and, it will provide for study of the potential environmental impacts of deep seabed mining.

United States negotiators have stated that in response to the specific objections of the United States, the agreement to modify the deep seabed provisions of Part XI will:

Recognize free market principles in the administration of the regime.

Increase the influence of the United States and other industrialized countries within the Authority by: (1) guaranteeing a United

States seat in the Council; (2) allowing the United States and two other industrialized countries, acting in concert, to block decisions in the Council; (3) preventing the Assembly from acting independently of Council recommendations; and (4) establishing a finance committee, including the five largest contributors to the organization's budget, which must make decisions by consensus;

Ensure that future amendments to the regime could not be adopted over United States objections;

Eliminate provisions compelling the transfer of seabed mining technology;

Allow the U.S. acting alone to veto any plan to distribute revenues to states or other entities, such as national liberation movements;

Eliminate the power of the organization to limit production from the deep seabed to protect the interests of land-based producers and, in its place, establish restrictions on subsidization of seabed mining based on GATT provisions;

Grandfather in seabed mine site claims by three U.S.-led multinational consortia on terms "no less favorable than" the best granted to Japanese, French, Russian, Indian or Chinese claimants, which have already been registered;

Eliminate the U.S. $1,000,000 annual fee miners would have had to pay prior to commercial production; and

Constrain the Enterprise by: (1) requiring a future decision by the Council (which the U.S. and a few allies could block) to make it operational; (2) subjecting it to the same requirements as other commercial enterprises; (3) eliminating the requirement that parties to the convention fund its mining activities; (4) providing that it operate through voluntary joint ventures with other commercial enterprises; and (5) eliminating provisions that would compel other commercial enterprises to provide it with technology.

In addition to responding to the specific U.S. objections, the new seabed mining regime will streamline the Authority and emphasize the need to ensure an efficient organization in keeping with the recognition that commercial mining is not imminent.

Mr. DURENBERGER. Mr. President, I understand that I may proceed as in morning business.

The PRESIDING OFFICER. The Senator is correct.

NOMINATION OF STEPHEN BREYER TO THE U.S. SUPREME COURT

Mr. DURENBERGER. Mr. President, I rise in support of the nomination of Judge Stephen Breyer to the U.S. Supreme Court.

I have always taken very seriously my responsibility as a Senator to advise and consent on presidential nominations. In my mind, my role is not to confirm only those nominees who agree with me on political issues. I have never applied a litmus test on any subject, such as abortion and the death penalty for example, even though I have strong convictions about both.

Regardless of the party in the White House, I have always asked three questions to determine whether presidential nominees deserve confirmation. First, does the nominee have the experience necessary to do the job? Second, does the nominee have the temperament to serve honorably? And finally, does the nominee have the character to be entrusted with the responsibility?

Without a doubt, Stephen Breyer has the experience necessary to serve as a Supreme Court Justice. He has had an exemplary career in the executive, legislative, and judicial branches. He has served on the Federal bench for 14 years, and spent the last 4 years as chief judge of the First Circuit Court of Appeals.

On the question of temperament, I believe Judge Breyer is qualified to serve on America's highest court. His decisions on the Federal bench have the reputation of being thoughtful and well-reasoned, without suggesting any particular political agenda. I trust he will continue to apply the law neutrally and fairly.

And finally, based on the evidence that is available, I have concluded that Judge Breyer has the character necessary to be entrusted with a seat on the Supreme Court.

I am aware that questions have been raised about Judge Breyer's membership in Lloyd's of London—a syndicate that underwrites insurance for corporations with potential liability for environmental cleanup costs—at the same time he was reviewing toxic waste cases as a Federal appeals judge.

But there is no evidence that his decisions had a direct impact on any of his investments, and I believe Judge Breyer's assertion that his impartiality was not affected in any of those cases.

Rather than showing a defect in character, I believe this was a case of bad judgment. My distinguished colleague from Indiana, Senator LUGAR, has raised several valid points about the judgment that Judge Breyer exercised with respect to this investment.

However, I have concluded that this single error in judgment should not, in itself, preclude membership on the Supreme Court. I do not think that a reasonable measure of any person is the worst mistake they ever made. Instead, I look at the entire record of accomplishment, his record of reasonable decisions, his record of diligent work for justice, his temperament and his character. By that measure, Stephen Breyer is worthy of a seat on the Supreme Court. That is why I will vote to confirm this nominee.

JUDGE STEPHEN BREYER'S BOOK "BREAKING THE VICIOUS CIRCLE: TOWARD EFFECTIVE RISK REDUCTION"

Mr. DURENBERGER. Mr. President, in 1993 Judge Breyer published a book with the title, "Breaking the Vicious Circle: Toward Effective Risk Reduction." The central premise of his book is that the efforts of the federal Government to reduce risks to public health and the environment are not well focused and produce inconsistent and illogical results.

The cause of this problem in Judge Breyer's view is the disjointed decisionmaking process that we in the Congress and as a nation use to choose the risk reduction policies that are actually imposed. The sources of risk to human health and the environment come to the attention of the public and the Congress one-at-time. They are considered by a multitude of committees and subcommittees in the legislature. They are regulated under a series of statutes with disparate goals and objectives. The statutes are carried out by several departments and agencies of the executive branch.

In Judge Breyer's view, the result is a confusing and wasteful web of regulations that do not achieve the greatest risk reduction for the dollars we invest. He points to a swamp in New Hampshire that is cleaned up to extraordinary levels under the Superfund Program, while Boston Harbor remains polluted. He cites a fivefold discrepancy in risk assessment outcomes between EPA and FDA methods. He reports examples of risk reduction regulations that may actually increase health risks from other sources.

Judge Breyer is not alone in raising these concerns. In 1987, the EPA itself published a study called "Unfinished Business" which suggested that Government and private sector resources were being wasted because Government policy too often regulated low-level risks while larger threats went unaddressed. And in 1990, the Science Advisory Board of EPA came to a similar conclusion in its report, "Reducing Risk."

No one could argue with the proposition that we ought to allocate the resources we devote to risk reduction as carefully as possible. And everyone would agree that decisions based on solid scientific information are usually better than decisions guided by hunches, superstition or bias.

However, we must often make decisions before all the evidence is in. Congress is constantly called upon to make decisions that allocate billions of public and private dollars toward one problem or another often before the science on causes and solutions is settled. We make difficult choices that are criticized from every direction.

Judge Breyer proposes a new superagency with wide-ranging authority to reallocate Government efforts as a solution to these problems. But there is no technical, scientific or bureaucratic fix for our condition. There is no philosopher king or group of senior bureaucrats who can relieve the Congress of the difficult job of setting priorities in a world of competing interests and limited knowledge. And there is no reason to believe that Congress has chosen incorrectly in the past.

A complete response to the concerns that Judge Breyer raises in his book

would fill many pages of the RECORD. I would make just two brief points, today.

First, this is not a technical problem that can be solved by appointing an agency with broader powers and better staff. Allocating budgets, imposing regulatory costs, is an act of expressing values, and in a democracy we do it by voting.

There is not one objective yardstick on which one can rank the relative importance of all these competing objectives. How much do you spend on children' health, before you start spending money to save endangered species? This is a question of preferences that in our system of government is assigned to elected members of the Congress, not appointed members of science boards.

Second, even where one yardstick of risk can be applied, for instance the risk of contracting fatal cancer, it does not necessarily follow that allocating resources to achieve the largest risk reduction is an absolute guide to policy. I believe that the public is more willing to accept small risks widely distributed, than large risks focused on the few. It is not just the absolute mortality, but also the equity, the distribution of the risk, that informs the public's sense of priorities.

The public gets incensed about hazardous waste sites and leaking underground storage tanks because they are immediately devastating to their victims, even if those victims are few in number, and hundreds more could be saved by spending the same dollars cleaning up indoor air quality. Allocating public and private resources to achieve the greatest reduction in risk for each dollar spent is not the best public policy, because it fails to reflect the public's sense of equity and justice. How much an industry should be required to spend to prevent its externalities from imposing unjustified costs on others is, unless one takes an absolutist view, a value-laden decision that can only be made in the context of our entire social experience.

I am all for more science. And the Congress has a fundamental obligation to spend the taxpayers' money as wisely as possible. We often make mistakes. But I do not agree that the anecdotes cited in Judge Breyer's book call into question either the process we have used to select environmental priorities or the allocation of resources now reflected in the budget and regulations of EPA and the other agencies we charged to protect public health and the environment.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

CONFIRMATION OF STEPHEN BREYER TO THE SUPREME COURT

Mr. PELL. Mr. President, I am pleased to support the nomination of Stephen Breyer to become an Associate Justice on the United States Supreme Court and I believe that President Clinton has made a wise and timely choice in choosing him for the upcoming vacancy on the Court.

In stating my support for Judge Breyer, I salute President Clinton for his primary role in making this nomination. The President has had two opportunities to fill vacancies on the Supreme Court and he has made outstanding choices in first nominating Ruth Bader Ginsburg last year and now Stephen Breyer. His choices reflect moderation and respect for the Court's role as the supreme arbiter of laws for all citizens in this country, regardless of political leanings and agendas. He has likewise taken the lead in appointing similarly qualified and diverse candidates to the lower courts. The President deserves great credit for carrying out with such attention and care his solemn duties with regard to appointing members of the Judiciary.

Specifically regarding Judge Breyer, he has gone through a confirmation process which has been pleasantly harmonious, and bipartisan. He is much praised for his intellect, moderation, compassion, temperament, dedication to principle, respect for the law, and his ability to forge consensus rather than encourage division. I join in these assessments of his record. I am also confident that he will bring these much-needed qualities to a Supreme Court which has been subject to polarization in recent years. A calm hand and a reasoned voice will be welcome and if history is any guide, Judge Breyer will provide just such an influence.

Accordingly, I wholeheartedly support the confirmation of Judge Breyer for the Supreme Court, congratulate him on the accomplishments of his career, extend every good wish as he assumes the duties and responsibilities of his post, and look forward to a long and distinguished tenure for him on the bench.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 3:01 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House disagrees to the amendments of the Senate to the bill (H.R. 4426) making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1995, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. OBEY, Mr. YATES, Mr. WILSON, Mr. OLVER, Ms. PELOSI, Mr. TORRES, Mrs. LOWEY, Mr. SERRANO, Mr. SABO, Mr. LIVINGSTON, Mr. PORTER, Mr. LIGHTFOOT, Mr. CALLAHAN, and Mr. MCDADE as the managers of the conference on the part of the House.

The message also announced that the House disagrees to the amendments of the Senate to the bill (H.R. 4649) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1995, and for other purposes, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. DIXON, Mr. STOKES, Mr. DURBIN, Ms. KAPTUR, Mr. SKAGGS, Ms. PELOSI, Mr. OBEY, Mr. WALSH, Mr. ISTOOK, Mr. BONILLA, and Mr. MCDADE as the managers of the conference on the part of the House.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–3119. A communication from the Secretary of Agriculture, transmitting, pursuant to law, the report on the Forest Service for fiscal year 1993; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3120. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the report on the status of multifamily housing; to the Committee on Banking, Housing, and Urban Affairs.

EC–3121. A communication from the General Counsel of the Department of Commerce, transmitting, a draft of proposed legislation entitled "The Marine Navigation Trust Fund Act of 1994"; to the Committee on Environment and Public Works.

EC–3122. A communication from the Secretary of Energy, transmitting, pursuant to law, notice relative to the report entitled "Adequacy of Management Plans for the Future Generation of Spent Nuclear Fuel and High-Level Radioactive Waste"; to the Committee on Environment and Public Works.

EC–3123. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, a draft of proposed legislation entitled "The Advisory Committee Termination Act"; to the Committee on Governmental Affairs.

EC–3124. A communication from the Director of Employee Benefits of the Farm Credit Bank of Baltimore, Maryland, transmitting,

pursuant to law, the annual reports of Federal Pension Plans for calendar year 1993; to the Committee on Governmental Affairs.

EC–3125. A communication from the Vice President (Human Resource Management), Farm Credit Bank of Texas, transmitting, pursuant to law, the annual report for calendar year 1993; to the Committee on Governmental Affairs.

EC–3126. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, a draft of proposed legislation entitled "The Federal Acquisition Labor Law Improvement Act of 1994"; to the Committee on Labor and Human Resources.

EC–3127. A communication from the Secretary of Transportation, transmitting, a draft of proposed legislation entitled "Rail-Highway Grade Crossing Safety Act of 1994"; to the Committee on Environment and Public Works.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–607. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Environment and Public Works.

"SENATE CONCURRENT RESOLUTION NO. 69

"Whereas, in order to achieve national ambient air quality standards (NAAQS), the CAA requires ozone nonattainment areas classified as serious to implement, at the state's or the driving public's expense, an enhanced automobile emissions inspection and maintenance program pursuant to standards set by the U.S. Environmental Protection Agency (EPA); and

"Whereas, Section 182(a) of the CAA requires EPA to issue "guidance" to the states providing them with "continued reasonable flexibility to fashion effective, reasonable, and fair programs for the affected consumer;" and

"Whereas, the states, including Louisiana, have been effectively denied the flexibility provided in Section 182(a) by EPA arbitrarily withholding approval of any other program than its "model program"; and

"Whereas, the EPA's "model program" was formulated based on a hypothetical computer generated model using now outdated emissions data from 1980 model auto test fleet using assumptions which are seriously questionable based on recent data from real-world conditions; and

"Whereas, the implementation in the real world of Louisiana of EPA's hypothetical "model program" will most likely cause long waiting lines at inspections stations with the greatest cost and inconvenience impacting the driving poor; and

"Whereas, the program's benefits are highly speculative, uncertain, and very questionable as evidenced by a recent study conducted by EPA which showed that its basic assumptions regarding highway emissions are seriously flawed when real-world data such as traffic conditions and air conditioning use, are adequately considered; and

"Whereas, EPA's "model program" requires testing at one location and repair of "dirty" automobiles at another location, with long waiting liens likely at each; and

"Whereas, studies show that up to twenty-five percent of tested vehicles are falsely failed and on which no repairs are needed to bring such a vehicle up to standards; and

"Whereas, recent air quality monitoring indicates an improvement to such an extent that if classified now the Baton Rouge nonattainment area would not be required to implement an enhanced program, nevertheless the EPA's Part 51 rules do not provide credit for such "voluntary" improvements; and

"Whereas, although both federal and state governments want cleaner air, implementation of the "model program" is premature. As evidenced by the Government Accounting Office recent report that "EPA's enhanced I&M program could benefit from further research on technology, costs, and motorists' behavioral responses, which would be more prudent than committing the entire nation to a $5 billion per year program while major information gaps remain: Therefore, be it

"*Resolved*, That the Legislature of Louisiana does hereby memorialize Congress to seek suspension of the enhanced automobile inspection and maintenance program; or pressure USEPA into revising its mobile source rules to allow states reasonable flexibility in designing their programs as intended by the CAA amendments of 1990; or amend the Clean Air Act to provide for reclassification of a nonattainment area like the Baton Rouge ozone nonattainment area in which substantial progress toward ozone attainment has already been made; or take steps to allow other relief as may be required to allow for a more reasonable solution to Baton Rouge's air quality problems. Be it further

"*Resolved*, That the Congress encourage the EPA to implement the flexibility and waiver process ordered by the President in Executive Order No. 12875 issued on October 26, 1993. Be it futher

"*Resolved*, That a copy of this Resolution be transmitted to the presiding offices of the U.S. Senate and House of Representatives, to each member of the Louisiana congressional delegation and to the secretary of the Department of Environmental Quality ."

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. ROCKEFELLER:

S. 2331. A bill to amend title 38, United States Code, to extend or make permanent certain authorities and requirements under that title; to the Committee on Veterans Affairs.

By Mr. HATFIELD (for himself and Mrs. MURRAY):

S. 2332. A bill to amend the Federal Columbia River Transmission System Act to provide for the reconstitution of outstanding repayment obligations of the Administrator of the Bonneville Power Administration for the appropriated capital investments in the Federal Columbia River Power System; to the Committee on Energy and Natural Resources.

By Mr. KERRY (for himself and Mr. KENNEDY):

S. 2333. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel a certificate of documentation for the vessel *SHAMROCK V*; to the Committee on Commerce, Science, and Transportation.

By Mr. BAUCUS (by request):

S. 2334. A bill to improve safety at rail-highway grade crossings and railroad rights-of-way, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BROWN:

S. 2335. A bill to amend the Balanced Budget and Emergency Deficit Control Act of 1985 to require that OMB and CBO estimates for paygo purposes to recognize the increased revenues generated by economic growth resulting from legislation implementing any trade agreement; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, to the Committees on the Budget and Governmental Affairs, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MITCHELL (for himself and Mr. DOLE):

S. Res. 246. A resolution relative to the death of the Honorable Hugh Scott, formerly a Senator from the State of Pennsylvania; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ROCKEFELLER:

S. 2331. A bill to amend title 38, United States Code, to extend to make permanent certain authorities and requirements under that title: to the Committee on Veterans Affairs.

VA AUTHORITIES EXTENSION ACT OF 1994

• Mr. ROCKEFELLER. Mr. President, as chairman of Committee on Veterans' Affairs, I am pleased to introduce a bill that would make permanent two authorities relating to activities of the Department of Veterans Affairs, and extend a third.

Mr. President, the first provision would give VA permanent authority to waive military retired pay forfeiture requirements in the case of registered nurses employed by VA in shortage situations. The second provision would make permanent procedures to be followed in the case of special pay agreements for physicians and dentists employed by VA—including both basic pay and special pay—that would provide for total annual pay exceeding the amount for a person in Executive Level, grade I. The third provision would extend for 2 years VA's authority to enter into enhanced use leases of VA real property.

Mr. President, the provisions contained in this bill are technical ones which are necessary to enable VA to continue practices which Congress has previously authorized. The bill would make permanent certain temporary authorizations, and extend a third. I hope and expect that my colleagues in the committee will support this measure, and that we will report this bill for consideration by the Senate in the near future.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2331

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PERMANENT AUTHORITY FOR WAIVER OF REDUCTION OF RETIREMENT PAY FOR REGISTERED-NURSE POSITIONS.

Section 7426(c) of title 38, United States Code, is amended by striking out the second sentence.

SEC. 2. PERMANENT REQUIREMENT FOR REVIEW OF AGREEMENTS FOR SPECIAL PAY FOR PHYSICIANS AND DENTISTS.

Section 7432(d) of title 38, United States Code, is amended by striking out paragraph (4).

SEC. 3. EXTENSION OF AUTHORITY TO ENTER INTO ENHANCED-USE LEASES.

Section 8169 of title 38, United States Code, is amended by striking out "December 31, 1994," and inserting in lieu thereof "December 31, 1996".●

By Mr. HATFIELD (for himself and Mrs. MURRAY):

S. 2332. A bill to amend the Federal Columbia River Transmission System Act to provide for the reconstitution of outstanding repayment obligations of the Administrator of the Bonneville Power Administration for the appropriated capital investments in the Federal Columbia River Power System; to the Committee on Energy and Natural Resources.

BONNEVILLE POWER ADMINISTRATION REFINANCING ACT

Mr. HATFIELD. Mr. President, today I am pleased to introduce legislation which will end the decade-long battle to increase the electric power rates of the Bonneville Power Administration [BPA] in the Pacific Northwest. The legislation will resolve, once and for all, the perception by some that electric rates in the Pacific Northwest are subsidized by the Federal Government, and will discourage future proposals to raise electric rates to levels which would injure the region's economy.

The legislation is comprised of two primary elements: First, it provides for the refinancing of approximately $6.7 billion of Bonneville's low interest, appropriated debt, and replaces it with new debt that carries current market interest rates. Second, it provides an additional $100 million to the Federal Treasury, money that will be raised by BPA from its electrical customers.

In return for this arrangement, the Northwest's electrical ratepayers seek a permanent guarantee that the costs of repaying the Federal investment in the Columbia River hydroelectric system will not be altered further in the future. This is a proposal which is fair to both taxpayers and ratepayers and should be considered favorably by the Senate.

This legislation has its roots in a decade of proposals made by successive administrations to alter the repayment of the Federal investment in the Nation's hydroelectric system. As budget deficit grew, a cash-starved Federal Government looked to all sources of revenue generation to produce more dollars. The power marketing administrations, which produce large sums of annual revenues, became easy targets for those who look only at the bottom line. Little or no consideration was given to the impacts on local economies or the overall impact on Federal revenues. Let me recount some of the history associated with this issue.

In 1985, the first proposal to alter Federal power marketing administration repayment practices was offered by President Reagan. Under that initial proposal, electric rates for the Bonneville Power Administration would have increased from between 50 to 80 percent. The interest rates on outstanding investments would have been raised to current rates, and the methodology for defining the amount of repayment due in any given year would have been altered.

Then, in 1986, the Reagan administration proposed selling the power marketing administrations to the highest bidders. The methodology for selling the PMA's was never determined, however, and the potential impact of the proposal was impossible to calculate. It is safe to say, though, that the purpose of the initiative was to create at least as much money for the Treasury as the earlier proposal.

From 1987 through 1990, the Reagan and Bush administrations proposed various repayment schemes that would have resulted in PMA rate increases of 10 to 40 percent. In 1991 and 1992, the Bush administration lowered its sights and submitted a revised proposal which would have raised rates approximately 12 to 15 percent.

In 1993, the Clinton administration proposed increasing rates for the PMA's such that an additional $100 million would be generated annually. Because the costs of this proposal were not allocated between PMA's, it was impossible to identify the exact rate impact.

While none of these proposals ultimately was successful, each created a cost for the economies which depend on PMA electric power. Electricity is the cornerstone of much of the Nation's economy, particularly in the Pacific Northwest. The high reliability and low cost of electric power provides the United States, and especially the Pacific Northwest, with a global competitive advantage which benefits the entire Nation.

As each of these proposals was made, uncertainty over the future cost of electricity was created. In the Pacific Northwest, where over half the electric power consumed is marketed by the Bonneville Power Administration, these proposals cast a cloud of uncertainty over future electric power prices. Rate increases of the magnitude contemplated by the proposals would devastate the economy of the region by discouraging investment in infrastructure, including modernization of new plants and equipment, and close factories and businesses which operate on the margin, many of which were attracted to the availability of low cost hydroelectric power in the region.

In fact, the benefit of these proposals was overstated by every administration because the potential for lost tax revenue as a result of business failure or lack of investment was never taken into account.

Let me make it perfectly clear that I have opposed each and every one of these proposals over the years, and believe that they were, at best, misguided, if not hypocritical. Water projects throughout this country were built with no expectation of payback by the users of the facilities. Unlike these other situations, in the case of hydroelectric generation, the users are paying back the investment, with interest, based on the terms agreed to at the time the investment was made. Accordingly, there is no subsidy associated with the Federal Power Marketing Program. This situation is often, and aptly, compared to a home mortgage. Attempting to alter unilaterally the terms of these financial arrangements years after the investment was made, based on current financial conditions, is predatory and unfair.

But, Mr. President, this is politics and not business. The lure of short-term fixes to generate cash during periods of huge budget deficits will not vanish in the night. It is time, therefore, to resolve this matter and put it behind us, despite the fact that 50 U.S. Senators signed a letter in 1990 opposing repayment reform, and that every proposal that has been made has been rejected by the Congress.

The development of this legislation actually began over 3 years ago. In 1991, I urged BPA and its customers to develop proposals to resolve the issue permanently. Customers of other power marketing administrations also were invited to work with the Pacific Northwest, or to develop proposals on their own. In 1992, after a year of study and consultation involving Bonneville, its customers and the customers of other power marketing administrations, a study document was produced. That study identified a range of alternatives, including one to refinance BPA's debt to increase the rate of interest it pays to the Treasury.

When that study was completed, another meeting of BPA and other PMA customers was held in my Washington, DC office to discuss the ramifications of the study. At that meeting, a variety of views were expressed as to

whether PMA customers wanted to continue to fight each and every repayment alternative in the future, or if it was time to find a permanent solution. The Pacific Northwest's representatives voiced their interest in supporting an appropriate proposal, provided that it ensured long-term certainty to end the long-term threat of further rate increases on Bonneville's appropriated debt. Customer representatives for all PMA's also were encouraged to consider options which would benefit their systems, and support for any such changes was expressed.

A significant opportunity to advance the BPA proposal occurred last year with the release of Vice President GORE's National Performance Review [NPR]. To the Vice President's credit, the Department of Energy and others in the administration recognized that a new and realistic approach to repayment reform could be formulated. The NPR took the dramatic step of recommending the BPA debt refinancing proposal originally identified in the study developed by Bonneville and its customers. The NPR, however, also included a $100 million premium as an additional cost the BPA ratepayers would be required to pay—over and above the annual principal and interest payments on the appropriated debt. While this premium is distasteful, it will, over the long-term, benefit the Pacific Northwest ratepayers, and is a price worth paying.

The most fundamental concern with the $100 million premium is that it may suggest to some there is a subsidy of PMA customer electric rates. Let me be perfectly clear on this issue. There is no subsidy. Accordingly, the $100 million may be viewed as nothing less than extortion. In my opinion, however, the $100 million price tag is analogous to the costs a business might experience when settling litigation.

While the subsidy issue is important, it is merely a side show to the real issue, that being the urgent need of the Government to reduce the Federal debt. Considering the need to raise additional revenue, there may well come a time when the Congress will conclude that the path of least resistance is to embrace the dubious notion that subsidies for PMA customers exist. Given the inherent risk in that outcome, the $100 million premium is quite attractive. But, this transfer of wealth from Pacific Northwest ratepayers to U.S. taxpayers is supportable only if it is accompanied by a long-term guarantee there will be no future increases in the cost of repaying the Federal investment in the Northwest hydroelectric system. The NPR initiative included such a guarantee.

The NPR initiative led to hastily drafted legislation which was introduced in the Congress last October. That proposal would have allowed BPA to raise money in the private capital markets to fund the refinancing of its debt. The Congressional Budget Office, in its testimony before the Senate Committee on Energy and Natural Resources, indicated that the NPR proposal would lead to an increase in the Federal budget deficit. While this was disappointing, other alternatives remained available for consideration.

We are now on a different path. The legislation I am introducing today provides for the refinancing of BPA's appropriated debt through the U.S. Treasury rather than the private capital markets. It is my understanding this resolves the fundamental issue which concerned CBO and caused it to score the previous proposal as an increase in the deficit.

Let me take a moment to describe the specifics of the legislation. The legislation will require that BPA's outstanding repayment obligations on appropriations be reconstituted by resetting outstanding principal at the present value of the current principal and annual interest that BPA would owe to the Federal Treasury, plus $100 million. Enactment of the bill will represent agreement between Northwest ratepayers and the U.S. Government that the subsidy criticisms are resolved permanently. Interest rates on the new principal will be reassigned at the Treasury's current long-term interest rates. Interest rates on new investments financed by appropriations, which are now administratively set equivalent to long-term Treasury financing costs, will be required by law.

The legislation also proposes that certain credits be granted to BPA's cash transfers to the Treasury in connection with payments BPA would make under a proposed litigation settlement between the United States and the Confederated Tribes of the Colville Reservation. It is my understanding that it is the administration's view that these credits, taken together with the one-time judgment fund payment, represent an equitable allocation of the costs of litigation settlement between BPA ratepayers and Federal taxpayers. Section 9 of the legislation complements legislation submitted by the administration on the Colville settlement. This new legislation contains repayment credit provisions that are different in timing but achieve the same results in terms of the present value cost to ratepayers and taxpayers.

This proposal addresses only the repayment of the Bonneville Power Administration and not other power marketing administrations. As noted earlier, every attempt was made to keep the customers of other power marketing administrations apprised of our intentions to resolve the repayment issue. We have encouraged them to find solutions which also would resolve permanently their own concerns. If the customers of other PMA's are in a position to make changes that will ensure long-term certainty for them, they are invited to join this effort.

Besides providing a $100 million premium to the Federal Treasury, this legislation provides an additional benefit to taxpayers. Competition within the electric power industry is increasing dramatically, particularly since the passage of tne Energy Policy Act of 1992. That competition is felt most keenly at the wholesale level because the Energy Policy Act provided greater transmission access at that level. Bonneville is unique in that it operates essentially only in the wholesale arena. Competitors are attempting to attract BPA's customers away with some limited success. One primary reason given for departing the BPA system is that rates may escalate dramatically and swiftly in the future as a result of repayment reform. The elimination of this risk not only benefits Bonneville, but also provides greater assurance that the repayment of the Federal investment will be accomplished on time and in full.

Finally, this legislation also benefits taxpayers by assuring that any future investments in the Northwest hydroelectric system will be repaid with interest rates reflecting the Treasury's cost of money at the time the investment is made. This will assure that no additional or lingering charges of the existence of a Federal electrical subsidy are made with respect to future investments.

Mr. President, the administration was exceptionally helpful in developing this legislation, and I especially appreciate the assistance provided by the Office of Management and Budget and the Department of Energy. I understand that the administration is continuing to review certain aspects of the bill, and that various revisions may be necessary. I look forward to continuing to work with the administration over the next several weeks to identify any provisions in need of further clarification, and hope that all remaining issues can be resolved to our mutual satisfaction.

I ask unanimous consent that the bill and a section-by-section analysis of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2332

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Bonneville Power Administration Refinancing Act".

SEC. 2. DEFINITIONS.

Section 3 of the Federal Columbia River Transmission System Act (16 U.S.C. 838a) is amended—

(1) by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively;

(2) by inserting after paragraph (a) the following new paragraph (b):

"(b) The term 'capital investment' means a capitalized cost funded by Federal appropriations that—

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"(1) is for a project, facility, or separable unit or feature, of a project or facility;

"(2) is a cost for which the Administrator is required by law to establish rates to repay to the United States Treasury through the sale of electric power, transmission, or other services;

"(3) excludes a Federal irrigation investment; and

"(4) excludes an investment financed by the current revenues of the Administrator or by bonds issued and sold, or authorized to be issued and sold, by the Administrator under section 13 of this Act."; and

(3) by adding after paragraph (d), as redesignated by paragraph (1), the following:

"(e) The term 'old capital investment' means a capital investment whose capitalized cost—

"(1) was incurred, but not repaid, before October 1, 1995; and

"(2) was for a project, facility, or separable unit or feature, of a project or facility placed in service before October 1, 1995.

"(f) The term 'repayment date' means the end of the period within which the Administrator's rates are to ensure the repayment of the principal amount of a capital investment.

"(g) The term 'Treasury rate', for a fiscal year, means a rate that the Secretary of the Treasury determines as soon as practicable after the beginning of the fiscal year and that is equal to the average prevailing market yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity. The average yield is computed as the average during the preceding fiscal year using the daily bid prices. When the average yield so computed is not a multiple of one-eighth of 1 percent, the rate is the multiple of one-eighth of 1 percent nearest to the average yield.".

SEC. 3. RECONSTITUTION OF OUTSTANDING PAYMENT OBLIGATIONS.

The Federal Columbia River Transmission System Act (16 U.S.C. 838 et seq.) is amended by adding at the end the following:

"NEW PRINCIPAL AMOUNTS

"SEC. 14. (a) Effective October 1, 1995, an old capital investment has a new principal amount that is the sum of—

"(1) the present value, calculated using a discount rate equal to the Treasury rate for fiscal year 1996, of the old payment amounts for the old capital investment; and

"(2) an amount equal to $100,000,000 multiplied by a fraction whose numerator is the principal amount of the old payment amounts for the old capital investment and whose denominator is the sum of the principal amounts of the old payment amounts for all old capital investments.

"(b) The Administrator shall determine the new principal amounts for old capital investments. The Administrator shall obtain the approval of the Secretary of the Treasury of the Administrator's determination of the new principal amounts and the Administrator's assignment of the interest rate to the new principal amounts, on the basis of consistency with the provisions of section 14 and 15 of this Act.

"(c) For the purposes of this section, the term 'old payment amounts', in the case of an old capital investment, means the annual interest and principal that the Administrator would have paid to the United States Treasury from October 1, 1995, if the Bonneville Power Administration Refinancing Act were not enacted, assuming that—

"(1) the principal were repaid—

"(A) on the repayment date the Administrator assigned before October 1, 1993, to the old capital investment; or

"(B) in the case of an old capital investment for which the Administrator has not assigned a repayment date before October 1, 1993, on a repayment date the Administrator shall assign to the old capital investment in accordance with paragraph 10(d)(1) of the version of Department of Energy Order RA 6120.2 in effect on October 1, 1993; and

"(2) interest were paid—

"(A) at the interest rate the Administrator assigned before October 1, 1993, to the old capital investment; or

"(B) in the case of an old capital investment for which the Administrator has not assigned an interest rate before October 1, 1993, at the Treasury rate for the fiscal year in which construction is initiated on the project, facility, or separable unit or feature the old capital investment concerns.

"INTEREST RATE FOR NEW PRINCIPAL AMOUNTS

"SEC. 15. As of October 1, 1995, the unpaid balance on the new principal amount established for an old capital investment under section 14 of this Act bears interest annually at the Treasury rate for fiscal year 1996 until the earlier of the date that the new principal amount is repaid or the repayment date for the new principal amount.

"REPAYMENT DATES

"SEC. 16. As of October 1, 1995, the repayment date for the new principal amount established for an old capital investment under section 14 of this Act is no earlier than the repayment date for the old capital investment provided for under section 14(b)(1) of this Act.

"PREPAYMENT LIMITATIONS

"SEC. 17. During the period beginning on October 1, 1995, and ending on September 30, 2000, the total new principal amounts of old capital investments, as established under section 14 of this Act, that the Administrator may pay before their respective repayment dates shall not exceed $100,000,000.

"INTEREST RATES FOR NEW CAPITAL INVESTMENTS DURING CONSTRUCTION

"SEC. 18. (a) The principal amount of a capital investment for a project, facility, or separable unit or feature, of a project or facility placed in service after September 30, 1995, includes interest in each fiscal year of construction of the project, facility, or separable unit or feature the capital investment concerns at a rate equal to the 1-year rate for the fiscal year on the sum of—

"(1) construction expenditures that were made from the date construction commenced through the end of the fiscal year; and

"(2) accrued interest during construction.

"(b) The Administrator is not required to pay, during construction of the project, facility, or separable unit or feature the interest calculated, accrued, and capitalized under subsection (a).

"(c) For the purposes of this section, the term '1-year rate', for a fiscal year, means the 1-year Treasury agency borrowing rate as determined by the Secretary of the Treasury for use during the first month of the fiscal year taking into consideration the average of market yields on outstanding marketable interest-bearing obligations of the United States with approximate periods to maturity of 1 year.

"INTEREST RATES FOR NEW CAPITAL INVESTMENTS

"SEC. 19. The unpaid balance on the principal amount of a capital investment for a project, facility, or separable unit or feature, of a project or facility placed in service after September 30, 1995, bears interest—

"(1) from the date the project, facility, or severable unit or feature the investment concerns is placed in service until the earlier of the date the capital investment is repaid or the end of the repayment period for the capital investment; and

"(2) at a rate determined by the Secretary of the Treasury for use in assigning interest rates to new capital investments during the month that includes the date the project, facility, or separable unit or feature the new capital investment concerns is placed in service, taking into consideration the average of market yields on outstanding marketable interest-bearing obligations of the United States with periods to maturity comparable to the repayment period of the capital investment.

"CREDITS TO ADMINISTRATOR'S PAYMENTS TO THE UNITED STATES TREASURY

"SEC. 20. (a) Notwithstanding any other law, the Administrator shall apply against amounts payable by the Administrator to the United States Treasury a credit in the amount and for a fiscal year as follows:

"(1) $15,250,000 in fiscal year 1996.

"(2) $15,860,000 in fiscal year 1997.

"(3) $16,490,000 in fiscal year 1998.

"(4) $17,150,000 in fiscal year 1999.

"(5) $17,840,000 in fiscal year 2000.

"(6) $4,100,000 in each succeeding fiscal year so long as the Administrator makes annual payments to the tribes under the settlement agreement.

"(b) For purposes of this section:

"(1) The term 'settlement agreement' means the agreement between the United States of America and the Confederated Tribes of the Colville Reservation signed by the tribes on April 16, 1994, and by the United States of America on April 21, 1994, which agreement resolves claims of the tribes in docket 181–D of the Indian Claims Commission, which docket has been transferred to the United States Court of Federal Claims.

"(2) The term 'tribes' means the Confederated Tribes of the Colville Reservation, a federally recognized Indian tribe.

"CONTRACT PROVISIONS

"SEC. 21. In each contract of the Administrator that provides for the Administrator to sell electric power, transmission, or related services and that is in effect after September 30, 1995, the Administrator shall offer to include or shall offer to amend to include, as the case may be, provisions specifying that after September 30, 1995—

"(1) the Administrator shall establish rates and charges on the basis that—

"(A) the principal amount of an old capital investment shall be no greater than the new principal amount established under section 14 of this Act;

"(B) the interest rate applicable to the unpaid balance of the new principal amount of an old capital investment shall be no greater than the interest rate established under section 15 of this Act;

"(C) any payment of principal of an old capital investment shall reduce the outstanding principal balance of the old capital investment in the amount of the payment at the time the payment is tendered; and

"(D) any payment of interest on the unpaid balance of the new principal amount of an old capital investment shall be a credit against the appropriate interest account in the amount of the payment at the time the payment is tendered;

"(2) apart from charges necessary to repay the new principal amount of an old capital

investment as established under section 14 of this Act and to pay the interest on the principal amount under section 15 of this Act, no amount may be charged for return to the United States Treasury as repayment for or return on an old capital investment, whether by way of rate, rent, lease payment, assessment, user charge, or any other fee;

"(3) amounts provided under section 1304 of title 31, United States Code, shall be available to pay, and shall be the sole source for payment of, a judgment against or settlement by the Administrator or the United States on a claim for a breach of the contract provisions required by sections 14 through 21 of this Act; and

"(4) the contract provisions specified in sections 14 through 21 of this Act do not—

"(A) preclude the Administrator from recovering, through rates or other means, any tax that is generally imposed on electric utilities in the United States; or

"(B) affect the Administrator's authority under applicable law, including section 7(g) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839e(g)), to—

"(i) allocate costs and benefits, including but not limited to fish and wildlife costs, to rates or resources; or

"(ii) design rates.

"SAVINGS PROVISIONS

"SEC. 22. (a) Sections 14 through 21 of this Act do not affect the obligation of the Administrator to repay the principal associated with each capital investment, and to pay interest on the principal, only from the 'Administrator's net proceeds,' as defined in section 13 of this Act.

"(b) Sections 14 through 21 of this Act do not affect the authority of the Administrator to pay all or a portion of the principal amount associated with a capital investment before the repayment date for the principal amount.".

SECTION-BY-SECTION ANALYSIS

INTRODUCTION

The Bonneville Power Administration (BPA) markets electric power produced by federal hydroelectric projects in the Pacific Northwest and provides electric power transmission services over certain federally owned transmission facilities. Among other obligations, BPA establishes rate to repay to the U.S. Treasury the federal taxpayers' investments in these hydroelectric projects and transmission facilities made primarily through annual and no-year appropriations. Since the early 1980's, subsidy criticisms have been directed as the relatively low interest rates applicable to many of these Federal Columbia River Power System (FCRPS) investments. This legislation, the Bonneville Power Administration Refinancing Act (the "Act"), amends the Federal Columbia River Transmission System Act (16 U.S.C. 838 et seq.) (the "Transmission Act") with the intention of resolving permanently the subsidy criticisms in a way that benefits the taxpayer while minimizing the impact on BPA's power and transmission rates.

The legislation accomplishes this purpose by resetting the principal of BPA's outstanding repayment obligations at an amount that is $100 million greater than the present value of the principal and interest BPA would have paid in the absence of this Act on the outstanding appropriated investments in the FCRPS. The interest rate applicable to the reset principal amount is based on the U.S. Treasury's long-term interest rate in effect at the time the principal is reset. The resetting of the repayment obligations is effective October 1, 1995, coincident with the beginning of BPA's next rate period.

While the Act increases BPA's repayment obligations, and consequently will increase the rates BPA charges its ratepayers, it also provides assurance to BPA ratepayers that the Government will not further increase these obligations in the future. By eliminating the exposure to such increases, the legislation substantially improves the ability of BPA to maintain its customer base, and to make future payments to the U.S. Treasury on time and in full. Since the Act will cause both BPA's rates and its cash transfers to the U.S. Treasury to increase, it will aid in reducing the Federal budget deficit by an estimated $50 million over the current budget window.

SECTION 1. SHORT TITLE

The short title for this Act is the Bonneville Power Administration Refinancing Act.

SECTION 2. DEFINITIONS

This section amends the definitions section, section 3, of the Transmission Act.

The Transmission Act is amended to add a new paragraph 3(b), which clarifies the repayment obligations to be affected under this Act by defining "capital investment" to mean a capitalized cost funded by a Federal appropriation for a project, facility, or separable unit or feature of a project or facility provided that the investment is one for which the Administrator of the Bonneville Power Administration (Administrator or BPA) is required by law to establish rates to repay to the U.S. Treasury. The definition excludes Federal irrigation investments required by law to be repaid by the Administrator through the sale of electric power, transmission or other services; and, investments financed either by BPA current revenues or by bonds issued and sold, or authorized to be issued and sold, under section 13 of the Transmission Act.

The Transmission Act is amended to add a new paragraph 3(e), which defines those capital investments whose principal amounts are reset by this Act. "Old capital investments" are capital investments whose capitalized costs were incurred but not repaid before October 1, 1995, provided that the related project, facility, or separable feature or facility was placed in service before October 1, 1995. Thus, the capital investments whose principal amounts are reset by this Act do not include capital investments placed in service after September 30, 1995. The term "capital investments" is defined in new section 3(b).

The Transmission Act is amended to add a new paragraph 3(f), which defines "repayment date" as the end of the period that the Administrator is to establish rates to repay the principal amount of a capital investment.

The Transmission Act is amended to add a new paragraph 3(g), which defines the term "Treasury rate" as a long-term rate determined by the Secretary of the Treasury based on marketable interest-bearing securities of the United States having terms to maturity of 15 years or more. The Secretary of the Treasury determines the Treasury rate for a specified fiscal year by reference to the preceding fiscal year's average of daily bid prices on such securities. For example, the "Treasury rate for fiscal year 1996" would be determined by reference to the average of daily bid prices in the twelve months comprising fiscal year 1995. The term Treasury rate, in particular the term Treasury rate for fiscal year 1996, is used to establish both the discount rate for determining the present value of the old capital investments (section 14(a) of the Transmission Act, as amended by this Act) and the interest rate that will apply to the new principal amounts of the old capital investments (section 15 of the Transmission Act, as amended by this Act). The term Treasury rate is also used in section 14(c)(2)(B) of the Transmission Act, as amended by this Act, to determine the interest that would have been paid in the absence of this Act on old capital investments, whose facilities are brought into service between the end of fiscal year 1993 and the end of fiscal year 1995. For example, if an old capital investment is brought into service in fiscal year 1994, the Treasury rate that would apply under new section 14(c)(2)(B) to that investment would be the Treasury rate for fiscal year 1994. The Treasury rate is not to be confused with other interest rates that this Act directs the Secretary of the Treasury to determine, specifically, the short-term (one-year) interest rates to be used in calculating interest during construction of new capital investments (section 17 of the Transmission Act, as amended by the Act) and the interest rates that apply to capital investments the related facilities of which are brought into service after September 30, 1995 (section 18 of the Transmission Act, as amended by the Act).

SECTION 3. RECONSTITUTION OF OUTSTANDING PAYMENTS AMOUNTS

Section 3 further amends the Transmission Act as follows:

New principal amounts

The Transmission Act is amended to add a new section 14, which establishes new principal amounts of the old capital investments, which the Administrator is obligated by law to establish rates to repay. These investments were made by Federal taxpayers primarily through annual appropriations and include investments financed by appropriations to the U.S. Army Corps of Engineers, the U.S. Bureau of Reclamation, and to BPA prior to implementation of the Federal Columbia River Transmission System Act. In general, the new principal amount associated with each such investment is determined (regardless of whether the obligation is for the transmission or generation function of the FCRPS) by (a) calculating the present value of the stream of principal and interest payments on the investment that the administrator would have paid to the U.S. Treasury absent this Act and (b) adding to the principal of each investment a pro rata portion of $100 million. The new principal amount is established on a one-time-only basis. Although the new principal amounts become effective on October 1, 1995, the actual calculation of the reset principal will not occur until early 1996, because the discount rate will not be determined, the BPA's final audited financial statements will not become available, until later in that fiscal year.

As prescribed by the term "old capital investments," the new principal amount is not set for appropriations-financed FCRPS investments the related facilities of which are placed in service in or after fiscal year 1996; for Federal irrigation investments required by law to be recovered by the Administrator from the sale of electric power, transmission or other services, or for investments financed by BPA current revenues or by bonds issued or sold, or authorized to be issued and sold, under section 13 of the Transmission Act.

The discount rate used to determine the present value is the Treasury rate for fiscal

year 1996 and is identical to the interest rate that applies to new principal amounts for the old capital investments. Thus, the Secretary of the Treasury is responsible for determining the interest rate and the discount rate.

The discount period for a principal amount begins on the date that the principal amount associated with an old capital investment is reset (October 1, 1995) and ends, for purposes of making the present value calculation, on the repayment dates provided in this section. The repayment dates for purposes of making the present value calculation are already assigned to almost all of the old capital investments. For old capital investments that will be placed in service after October 1, 1993, but before October 1, 1995, no such dates have been assigned. The Administrator will establish the dates for these latter investments in accordance with U.S. Department of Energy Order RA 6120.2—"Power Marketing Administration Financial Reporting," as in effect at the beginning of fiscal year 1994. These ideas are captured in the definition of the term "old payment amounts."

The interest portion of the old payment amounts is determined on the basis that the principal amount would bear interest annually until repaid at interest rates assigned by the Administrator. For almost all old capital investments, these interest rates were assigned to the capital investments prior to the effective date of this Act. (For old capital investments that are placed in service after September 30, 1993, the interest rates to be used in determining the old payment amounts will be the Treasury rate for the fiscal year in which the construction of the related project or facility, or the separable unit or feature of a project or facility, was initiated. Section 3(g) of the Transmission Act, as amended by this Act, provides the manner in which these interest rates are established.) Thus, for purposes of determining the present value of an interest payment on a capital investment, the discount period for the payment begins on October 1, 1995, and ends on the date the interest payment would have been made.

The *pro rata* allocation of $100,000,000 is based on the ratio that the nominal principal amount of the old capital investment bears to the sum of the nominal principal amounts of all old capital investments. This added amount fulfills a key financial objective of the Act to provide the U.S. Treasury and Federal taxpayers with a $100,000,000 increase in the present value of BPA's principal and interest payments with respect to the old capital investments. Since the $100,000,000 is a nominal amount that bears interest at a rate equal to the discount rate, the present value of the stream of payments is necessarily increased by $100,000,000.

Paragraph (b) of section 14 of the Transmission Act, as amended by this Act, provides that the Administrator will determine the new principal amounts and obtain the approval of the Secretary of the Treasury for such determinations. The Administrator will calculate the new principal amount of each old capital investment in accord with section 14 on the basis of (i) the outstanding principal amount, the interest rate and the repayment date of the related old capital investment, (ii) the discount rate provided by the Secretary of the treasury, and (iii) for purposes of calculating the pro rata share of $100 million in each new principal amount under section 14(a)(2) of the Transmission Act, as amended by this Act, the total principal amount of all old capital investments. The Administrator will provide this data to the Secretary of the Treasury and obtain approval by the Secretary that the Administrator's calculation of each new principal amount and the Administrator's assignment of the interest rate to the new principal amounts is consistent with the provisions of this Act.

The approval by the Secretary of the Treasury will be completed as soon as practicable after the data is provided by the Administrator. It is expected that the Secretary of the Treasury will identify possible errors in the Administrator's calculations and raise and resolve these issues in consultation with the Administrator. Due to the ministerial nature of these one-time determinations and approvals under this section, it is expected that the confirmation by the Secretary will not require substantial time.

Interest rate for new principal amounts

The Transmission Act is amended to add a new section 15, which provides that the unpaid balance of the new principal amount of each old capital investment shall bear interest at the Treasury rate for fiscal year 1996 determined by the Secretary of the Treasury under section 3(g) of the Transmission Act, as amended by this Act. The unpaid balance of each new principal amount shall bear interest at that rate until the earlier of the date the principal is repaid or the end of the repayment period for the investment.

Repayment dates

The Transmission Act is amended by adding a new section 16, which in conjunction with the term "repayment date" as that term is defined in section 3(f) of the Transmission Act, as amended by this Act, provides that the end of the repayment period for each new principal amount for an old capital investment shall be no earlier than the repayment date used in making the present value calculations in section 14 of the Transmission Act, as amended by this Act. Under existing law, the Administrator is obligated to establish rates to repay capital investments within a reasonable number of years. Section 16 of the Transmission Act, as amended by this Act, confirms that the Administrator retains this obligation notwithstanding the enactment of this Act.

Prepayment limitations

The Transmission Act is amended by adding a new section 17, which places a cap on the Administrator's authority to prepay the new principal amounts of old capital investments. During the period October 1, 1995, through September 30, 2000, the Administrator may pay the new principal amounts of old capital investments before their respective repayment dates provided that the total of the prepayments during the period does not exceed $100,000,000.

Interest rates for new capital investments during construction

The Transmission Act is amended by adding a new section 18, which establishes in statute a key element of the repayment practices relating to capital investments the facilities of which are placed in service after September 30, 1995. The new section 18 provides the interest rates for determining the interest during construction of these facilities. For each fiscal year of construction, the Secretary of the Treasury determines a short-term interest rate upon which that fiscal year's interest during construction is based. The short-term interest rate for a given fiscal year applies to the sum of (a) the cumulative construction expenditures made from the start of construction through the end of the subject fiscal year, and (b) interest during construction that has accrued prior to the end of the subject fiscal year. The short-term rate for the subject fiscal year is set by the Secretary of the Treasury and is the one-year agency borrowing rate as determined by the Secretary of the Treasury for use during the first month of the fiscal year taking into consideration the average of current market yields on outstanding marketable obligations of the United States with approximate periods to maturity of one year. These ideas are included in the definition of the term "one-year rate."

This method of calculating interest during construction equates to common construction financing practice. In this practice construction is funded by rolling, short-term debt which, upon completion of construction, is finally rolled over into long-term debt that spans the expected useful life of the facility constructed. Accordingly, new section 18 of the Transmission Act provides that amounts for interest during construction shall be included in the principal amount of a new capital investment. Thus, the Administrator has no obligation with respect to the payment of this interest until construction is complete, at which point the interest during construction is included in the principal amount of the capital investment.

Interest rates for new capital investments

The Transmission Act, is amended by adding a new section 19, which establishes in statute an important component of BPA's repayment practice, that is, the methodology for determining the interest rates for capital investments the related facilities of which are placed in service after September 30, 1995. Heretofore, administrative policies and practice established the interest rates applicable to capital investments as a long-term Treasury interest rate in effect at the time construction commenced on the related facilities. By contrast, new section 19 provides that the interest rate assigned to capital investments made in a project, facility, or separable unit of feature of a project or facility, provided it is placed in service after September 30, 1995, is a rate that more accurately reflects the repayment period for the capital investment. The interest rate applicable to these capital investments is a rate determined by the Secretary of the Treasury taking into consideration the average of yields of certain marketable securities of the United States during the month in which the related project, facility, or separable unit or feature is placed in service. The marketable securities to be used by the Secretary of the Treasury in the interest rate determination are securities whose remaining maturities are comparable to the repayment period for the capital investment. BPA will obtain the applicable interest rate from a table of interest rates provided by the Secretary of the Treasury. The interest rates in this table shall be for various maturities and shall be determined by the Secretary of the Treasury by taking into consideration the average of the yields on marketable securities of the United States that have maturities comparable to the various maturities. Each of these investments would bear interest at the rate so assigned until the earlier of the date it is repaid or the end of its repayment period.

Credits to the Administrator's payments to the U.S. Treasury

The Transmission Act is amended to add a new section 20, which provides that the Administrator shall receive credits to annual cash transfers that would otherwise be made by the Administrator to the U.S. Treasury.

The credits are tied to annual payments to be made by the Administrator under a settlement of certain claims against the United States by the Confederated Tribes of the Colville Reservation, which claims relate to the construction and operation of Grand Coulee Dam. The credits, together with a lump-sum payments by the United States to the Tribes, represent an equitable allocation of the costs of the settlement between BPA ratepayers and federal taxpayers. The credits provided under this section shall be applied against interest payments or others payments to be made by the Administrator to the U.S. Treasury. The payments to the U.S. Treasury available for crediting include, without limitation, interest payments associated with capital investment, are reset under this Act; interest on bonds issued by BPA to the U.S. Treasury, and interest payments in connection with FCRPS investments that are placed in service after September 30, 1995.

New section 20 of the Transmission Act also provides that it will apply "notwithstanding any other law." This clause assumes that new section 20 will supplant a similar provision in proposed Federal legislation validating the settlement agreement, should that legislation be enacted before this Act. The proposed short title for the settlement agreement legislation is the "Colville Tribes Grand Coulee Dam Settlement Act."

Contract provisions

The Transmission Act, is amended to add a new section 21, which is intended to capture in contract the purpose of this legislation to permanently resolve issues relating to the repayment obligations of BPA's customers associated with an old capital investment. With regard to such investments, paragraph (1) of new section 21 requires that the Administrator offer to include in power and transmission contracts terms that prevent the Administrator from recovering and returning to the U.S. Treasury any return of the capital investments other than the interest payments or principal repayments authorized by this Act. Paragraph (1) of new section 21 also provides assurance to rate payers that outstanding principal and interest associated with each old capital investment, the principal of which is reset in this legislation, shall be credited in the amount of any payment in satisfaction thereof at the time the payment is tendered. This provision assures that payments of principal and interest will in fact satisfy principal and interest payable on these capital investments.

Whereas paragraph (1) of new section 21 limits the return to the U.S. Treasury of the Federal investments in the designated projects and facilities, together with interest thereon, paragraph (2) of section new 21 requires the Administrator to offer to include in contracts terms that prevent the Administrator from recovering and returning to the U.S. Treasury any additional return on those old capital investments. Thus, the Administrator may not impose a charge, rent or other fee for such investments, either while they are being repaid or after they have been repaid. Paragraph (2) of new section 21 also contractually fixes the interest obligation on the new principal obligation at the amount determined pursuant to section 15 of the Transmission Act, as amended by this Act.

Paragraph (3) of new section 21 is intended to assure BPA rate payers that the contract provisions described in paragraphs (1) and (2) of new section 21 are not indirectly circumvented by requiring BPA rate payers to bear through BPA rates the cost of a judgment or settlement for breach of the contract provisions. The subsection also confirms that the judgment fund shall be available to pay, and shall be the sole source for payment of, a judgment against or settlement by the Administrator or the United States on a claim for a violation of the contract provisions required by new section 21. Section 1304 of title 31, United States Code, is a continuing, indefinite appropriation to pay judgments rendered against the United States, provided that payment of the judgment is "not otherwise provided for." Paragraph 3 of new section 21 of this Act assures both that the Bonneville fund, described in section 838 of title 16, United States Code, shall not be available to pay a judgment or settlement for breach by the United States of the contract provisions required by new section 21, and that no appropriation, other than the judgment fund, is available to pay such a judgment.

Paragraph (4)(A) of new section 21 establishes that the contract protections required by new section 21 do not extend to Bonneville's recovering a tax that is generally applicable to electric utilities, whether the recovery by Bonneville is made through its rates or by other means.

Paragraph (4)(B) of new section 21 makes clear that the contract terms described above are in no way intended to alter the Administrator's current rate design discretion or ratemaking authority to recover other new costs or allocate costs and benefits. This Act, including the contract provisions under section 21, does not preclude the Administrator from recovering any other costs such as general overhead, operations and maintenance, fish and wildlife, conservation, risk mitigation, modifications, additions, improvements, and replacements to facilities, and other costs properly allocable to a rate or resource.

Savings provisions

The Transmission System Act is amended by adding a new section 22. Subsection (a) of this section assures that the principal and interest payments by the Administrator as established in this Act shall be paid only from the Administrator's net proceeds. Subsection (b) confirms that, except with respect to the prepayment limitations under section 17 of the Transmission Act, as amended by this Act, the Administrator may repay all or a portion of the principal associated with a capital investment before the end of its repayment period.

By Mr. KERRY (for himself and Mr. KENNEDY):

S. 2333. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel a certificate of documentation for the vessel *Shamrock V*; to the Committee on Commerce, Science, and Transportation.

"SHAMROCK V" CERTIFICATE OF DOCUMENTATION ACT OF 1994

Mr. KERRY. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2333

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding sections 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as applicable on the date of enactment of this Act, the Secretary of Transportation may issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel SHAMROCK V, (United States official number 900036).

By Mr. BAUCUS (by request):

S. 2334. A bill to improve safety at rail-highway grade crossings and railroad rights-of-way, and for other purposes; to the Committee on Environment and Public Works.

RAIL-HIGHWAY GRADE CROSSING SAFETY ACT OF 1994

• Mr. BAUCUS. Mr. President, today I am introducing, upon request, a bill to improve safety at rail-highway grade crossings and railroad rights-of-way. I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2334

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Rail-Highway Grade Crossing Safety Act of 1994".

SEC. 2. FINDINGS.

The Congress finds that—

(1) there are approximately 170,000 public and 110,000 private at-grade rail-highway crossings in the United States;

(2) during 1993, there were nearly 4,900 accidents at these crossings;

(3) it is necessary to improve safety at our Nation's rail-highway crossings and along rail rights-of-way;

(4) there are insufficient public funds to provide for the installation of warning systems that are automatically activated by approaching trains at all public crossings;

(5) many of the Nation's public rail-highway crossings are unnecessary and should be closed;

(6) rail-highway crossing consolidation will reduce the potential for rail-highway crossing collisions and will allow states to concentrate on improving safety at the remaining crossings;

(7) incentives are needed to encourage state and local governments to increase the consolidation of rail-highway crossings; and

(8) increased funding must be provided to educate motorists in their responsibilities at crossings in order to realize the full benefits from the public investment in rail-highway crossing warning systems.

SEC. 3. RAIL-HIGHWAY GRADE CROSSING CLOSING PROGRAM.

(a) Section 120(c) of title 23, United States Code, is amended by inserting "rail-highway crossing closures," after "vanpooling."

(b) Section 130 of title 23, United States Code, is amended by relettering subsection (h) as (j) and adding new subsections (h) and (i) to read as follows:

"(h) INCENTIVE FUNDS FOR CLOSING CROSSINGS.—

"(1) Subject to paragraph (2) of this subsection, any state after adopting a policy requiring the review of the need for all new public at-grade rail-highway crossings, may, in its discretion, use the funds authorized under this section to provide an incentive

payment to a local jurisdiction upon the permanent closing by the jurisdiction of a public at-grade crossing.

"(2) The incentive payments authorized by paragraph (1) of this subsection may not exceed $7,500, provided that the funds are matched by an equal payment from the railroad owning the tracks on which the crossing is located.

"(3) The local jurisdiction receiving funds under this subsection shall use the Federal funds portion of the incentive payment for transportation safety improvements only.

"(i) PUBLIC BENEFITS AND COSTS ANALYSES.—Within 18 months after the date of this Act, the Secretary shall establish guidelines to enable states to determine the public benefits and costs resulting from any new rail-highway grade crossing."

SEC. 4. OPERATION LIFESAVER.

Section 104(d)(1) of title 23, United States Code, is amended by striking everything after "Operation lifesaver.—" and inserting in lieu thereof the following: "Before making an apportionment of funds under subsection (b)(3) for a fiscal year, the Secretary shall set aside $500,000 of the funds authorized to be appropriated for the surface transportation program for such fiscal year for carrying out a public information and education program to help prevent and reduce motor vehicle accidents, injuries, and fatalities and to improve driver performance at railway-highway crossings, and to help prevent trespassing on rail rights-of-way and the resulting injuries and fatalities, provided however, expenditure of any funds in excess of $300,000 shall be contingent upon receipt of matching funds from non-public sources."

SEC. 5. GRADE CROSSING CORRIDOR SAFETY INCENTIVE PROGRAM.

Section 104 of title 23, United States Code is amended by adding a new paragraph (4) to subsection (d) to read as follows:

"(4) GRADE CROSSING CORRIDOR SAFETY INCENTIVE PROGRAM.—Before making an apportionment of funds under subsection (b)(3) for a fiscal year, the Secretary shall set aside $15,000,000 of the funds authorized to be appropriated for the surface transportation program for such fiscal year to carry out a program to provide a financial incentive to States that would review and implement grade crossing safety improvements on a corridor basis in accordance with section 130(k) of title 23, United States Code."

Section 130 of title 23, United States Code is amended by adding subsection (k) to read as follows:

"(k) GRADE CROSSING CORRIDOR SAFETY INCENTIVE PROGRAM.—

"(1) The Secretary shall carry out a program to provide an additional financial incentive to States that would review and implement grade crossing safety improvements on a corridor basis. This financial incentive would be in addition to those funds available in accordance with the preceding subsections.

"(2) Funds authorized to be appropriated to carry out this subsection shall be available for obligation at the discretion of the Secretary. The Secretary shall issue investment criteria for approving projects under this section.

"(3) All provisions of chapter 1 of title 23, United States Code, other than provisions relating to apportionment formula and Federal share, shall apply to funds made available to carry out this subsection, except as determined by the Secretary to be inconsistent with this subsection. Funds authorized to be appropriated to carry out this section shall remain available until expended."•

By Mr. BROWN:

S. 2335. A bill to amend the Balanced Budget and Emergency Deficit Control Act of 1985 to require that OMB and CBO estimates for paygo purposes to recognize the increased revenues generated by economic growth resulting from legislation implementing any trade agreement; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, to the Committees on the Budget and Governmental Affairs, with instructions that if one committee reports, the other committee have 30 days to report or be discharged.

TRADE AGREEMENTS LEGISLATION

• Mr. BROWN. Mr. President, I rise today to introduce a bill that adopts a dynamic budget scoring for trade agreements.

Mr. President, the Senate will soon be voting on legislation to implement the Uruguay round of the General Agreement on Tariffs and Trade [GATT]. In order to approve the Uruguay round GATT, Congress will have to choose between increasing taxes, restraining spending, or waiving the budget rules.

According to a report to be released tomorrow by the Joint Economic Committee, GATT will create over $30 billion in economic growth in the first 5 years after its enactment. This growth would generate sufficient revenues to offset the projected loss on tariff revenue. U.S. Trade Representative Mickey Kantor also has testified before Congress that he expects the GATT to generate tax revenue sufficient to cover the expected $11 billion loss over 5 years. Unfortunately, the budget pay-as-you-go rules prevent the Congressional Budget Office from taking such economic growth into account.

The Clinton administration has recently proposed a series of measures to make up for the loss of revenue. However, the administration's proposals rely heavily on tax increases and not on budget cuts. Some budget cuts proposed by the administration also are included in its welfare reform proposal.

Mr. President, I support the paygo process because it helps keep the deficit from growing even larger. However, it does not make economic sense to only look at revenue reductions and ignore the revenue increases that will occur because of economic growth generated by trade agreements.

The legislation I introduce today adopts a dynamic budget scoring for trade agreements. Dynamic budget scoring allows the OMB and CBO to take into account the increased revenues generated by the trade agreements, so they may be used to offset lost revenues when tariffs are lowered.

Mr. President, let me make it clear that this bill only applies to trade agreements, and the increased revenues generated by GDP growth resulting from the legislation implementing a trade agreement cannot be used as offsets beyond the total of lost revenues. If the offset does not fully cover the lost tariff revenues, we will still need to pay for the difference.

Mr. President, Americans need more open borders, not higher taxes. We must reject any proposal to raise taxes on working Americans to pay for trade agreements that will generate tax revenues. By adopting dynamic budget scoring, we can eliminate the need for tax increases as an option to pay for GATT and other future trade agreements.•

ADDITIONAL COSPONSORS

S. 277

At the request of Mr. SIMON, the names of the Senator from Colorado [Mr. CAMPBELL], the Senator from South Dakota [Mr. DASCHLE], and the Senator from Vermont [Mr. LEAHY] were added as cosponsors of S. 277, a bill to authorize the establishment of the National African American Museum within the Smithsonian Institution.

S. 340

At the request of Mr. HEFLIN, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of S. 340, a bill to amend the Federal Food, Drug, and Cosmetic Act to clarify the application of the act with respect to alternate uses of new animal drugs and new drugs intended for human use, and for other purposes.

S. 549

At the request of Mr. DOMENICI, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 549, a bill to provide for the minting and circulation of one-dollar coins.

S. 784

At the request of Mr. HATCH, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 784, a bill to amend the Federal Food, Drug, and Cosmetic Act to establish standards with respect to dietary supplements, and for other purposes.

S. 1208

At the request of Mr. WOFFORD, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 1208, a bill to authorize the minting of coins to commemorate the historic buildings in which the Constitution of the United States was written.

S. 1658

At the request of Mr. HATCH, the names of the Senator from Rhode Island [Mr. CHAFEE], the Senator from Indiana [Mr. COATS], the Senator from Iowa [Mr. GRASSLEY], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Alaska [Mr. STEVENS], the Senator from Washington [Mr. GORTON], the Senator from Vermont [Mr. JEFFORDS], the Senator from North Carolina [Mr. HELMS], the Senator from

Utah [Mr. BENNETT], the Senator from North Carolina [Mr. FAIRCLOTH], and the Senator from Mississippi [Mr. LOTT] were added as cosponsors of S. 1658, a bill to establish safe harbors from the application of the antitrust laws for certain activities of providers of health care services, and for other purposes.

S. 1793

At the request of Mr. KEMPTHORNE, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 1793, a bill to provide an exemption from citation by the Secretary of Labor under the Occupational Safety Act to employers of individuals who perform rescues of individuals in imminent danger as a result of a life-threatening accident, and for other purposes.

S. 1887

At the request of Mr. BAUCUS, the names of the Senator from Maine [Mr. MITCHELL], the Senator from New Hampshire [Mr. GREGG], the Senator from Idaho [Mr. KEMPTHORNE], the Senator from Oklahoma [Mr. BOREN], the Senator from Missouri [Mr. DANFORTH], and the Senator from Tennessee [Mr. MATHEWS] were added as cosponsors of S. 1887, a bill to amend title 23, United States Code, to provide for the designation of the National Highway System, and for other purposes.

S. 1898

At the request of Mr. RIEGLE, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 1898, a bill to amend the Internal Revenue Code of 1986 to make permanent the section 170(e)(5) rules pertaining to gifts of publicly traded stock to certain private foundations, and for other purposes.

S. 1979

At the request of Mrs. MURRAY, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 1979, a bill to require employers to post, and to provide to employees individually, information relating to sexual harassment that violates title VII of the Civil Rights Act of 1964, and for other purposes.

S. 2178

At the request of Mr. DASCHLE, the name of the Senator from Louisiana [Mr. BREAUX] was added as a cosponsor of S. 2178, a bill to provide a program of compensation and health research for illnesses arising from service in the Armed Forces during the Persian Gulf War.

S. 2183

At the request of Mrs. HUTCHISON, the names of the Senator from New Hampshire [Mr. GREGG] and the Senator from New Mexico [Mr. BINGAMAN] were added as cosponsors of S. 2183, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the signing of the World War II peace accords on September 2, 1945.

S. 2246

At the request of Mr. DORGAN, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 2246, a bill to require the Secretary of the Treasury to include organ donation information with individual income tax refund payments.

S. 2258

At the request of Mr. DECONCINI, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of S. 2258, a bill to create a Commission on the Roles and Capabilities of the U.S. Intelligence Community, and for other purposes.

S. 2275

At the request of Mr. EXON, the name of the Senator from Nebraska [Mr. KERREY] was added as a cosponsor of S. 2275, a bill to amend subtitle IV of title 49, United States Code, relating to interstate commerce.

S. 2294

At the request of Mr. HATFIELD, the name of the Senator from Nebraska [Mr. KERREY] was added as a cosponsor of S. 2294, a bill to amend the Public Health Service Act to provide for the expansion and coordination of research concerning Parkinson's disease and related disorders, and to improve care and assistance for its victims and their family caregivers, and for other purposes.

S. 2298

At the request of Mr. LEAHY, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 2298, a bill to amend the Farm Credit Act of 1971 to enhance the ability of the banks for cooperatives to finance agricultural exports, and for other purposes.

SENATE JOINT RESOLUTION 157

At the request of Mr. SASSER, the names of the Senator from New Mexico [Mr. BINGAMAN], the Senator from Connecticut [Mr. DODD], the Senator from Massachusetts [Mr. KENNEDY], the Senator from South Dakota [Mr. DASCHLE], the Senator from Maryland [Mr. SARBANES], the Senator from Arkansas [Mr. BUMPERS], the Senator from Georgia [Mr. NUNN], the Senator from California [Mrs. BOXER], the Senator from Idaho [Mr. CRAIG], the Senator from Maine [Mr. COHEN], the Senator from Virginia [Mr. WARNER], the Senator from Oregon [Mr. HATFIELD], the Senator from Vermont [Mr. JEFFORDS], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Missouri [Mr. DANFORTH], the Senator from Missouri [Mr. BOND], and the Senator from Maryland [Ms. MIKULSKI] were added as cosponsors of Senate Joint Resolution 157, a joint resolution to designate 1994 as "The Year of Gospel Music."

SENATE JOINT RESOLUTION 167

At the request of Mr. SIMON, the names of the Senator from Michigan [Mr. RIEGLE] and the Senator from Idaho [Mr. CRAIG] were added as cosponsors of Senate Joint Resolution 167, a joint resolution to designate the week of September 12, 1994, through September 16, 1994, as "National Gang Violence Prevention Week."

SENATE CONCURRENT RESOLUTION 60

At the request of Mr. GRAMM, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of Senate Concurrent Resolution 60, a concurrent resolution expressing the sense of the Congress that a postage stamp should be issued to honor the 100th anniversary of the Jewish War Veterans of the United States of America.

SENATE RESOLUTION 246—RELATIVE TO THE DEATH OF THE HONORABLE HUGH SCOTT, FORMERLY A SENATOR FROM THE COMMONWEALTH OF PENNSYLVANIA

Mr. MITCHELL (for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 246

Resolved, That the Senate has heard with profound sorrow and deep regret the announcement of the death of the Honorable Hugh Scott, formerly a Senator from the State of Pennsylvania.

Resolved, That the Secretary communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That when the Senate recesses today, it recess as a further mark of respect to the memory of the deceased Senator.

AMENDMENTS SUBMITTED

IMPROVING AMERICA'S SCHOOLS ACT OF 1993

GORTON (AND OTHERS) AMENDMENT NO. 2418

Mr. GORTON (for himself, Mr. LIEBERMAN, Mr. BURNS, Mr. CRAIG, Mr. BOND, Mr. MURKOWSKI, and Mr. BENNETT) proposed an amendment to the bill (S. 1513) entitled "Improving America's Schools Act of 1993"; as follows:

At the end of title IV, insert the following:

SEC. . LOCAL CONTROL OVER SCHOOL VIOLENCE.

(a) IN GENERAL.—In any school that receives Federal funds, if a student brings to or possesses on school property or at a school-sponsored event a weapon as such term is defined in, and in contravention of, school policy, or has demonstrated life threatening behavior in the classroom or on school premises, then the student shall be subjected to the disciplinary actions as determined by the local educational agency.

(b) INDIVIDUALS WITH DISABILITIES.—Paragraph (3) of section 615(e) of the Act (20 U.S.C. 1415(e)(3)) is amended—

(1) by striking "During" and inserting "(A) Except as provided in subparagraph (B), during", and

(2) by adding at the end the following new subparagraph:

"(B)(i) Except as provided in clause (iii), if the proceedings conducted pursuant to this section involve a child with a disability who brings to or possesses on school property or at a school-sponsored event a weapon as such term is defined in, and in contravention of school policy, or a child with a disability who has demonstrated life threatening behavior in the classroom or on school premises, then the child may be placed in an interim alternative educational setting for not more than 90 days.

"(ii) The interim alternative educational setting described in clause (i) shall be decided by the individuals described in section 602(a)(20).

"(iii) If a parent or guardian of a child described in clause (i) requests a due process hearing pursuant to paragraph (2) of subsection (b), then the child shall remain in the alternative educational setting described in such clause during the pendency of any proceedings conducted pursuant to this section, unless the parents and the local educational agency agree otherwise.".

(c) SUNSET PROVISION.—This section, and the amendments made by this section, shall be effective during the period beginning on the date of enactment of this Act and ending on the date of enactment of an Act (enacted after the date of the enactment of this Act) that reauthorizes the Individuals With Disabilities Education Act.

(d) DEFINITIONS.—For the purposes of this section, the term "life threatening behavior" is defined as "an injury involving a substantial risk of death; loss or substantial impairment of the function of a bodily member, organ, or mental faculty that is likely to be permanent; or an obvious disfigurement that is likely to be permanent.

SPECTER AMENDMENT NO. 2419

Mr. SPECTER proposed an amendment to the bill S. 1513, supra; as follows:

On page 538, on line 2, strike "; and" and insert the following: ", including contracts with private management companies;"

On page 538, on line 5, before the period add the following: "; and

"(IX) contracting out the management of troubled schools to private management firms"

On page 780, line 9, strike "and"

On page 780, after line 11, before the "." insert the following: "; and

"(I) establish partnerships with private educational providers whose comprehensive technology systems address the need of children in poverty."

On page 1000, line 10, strike the "and", and insert the following:

"(R) demonstrations that are designed to test the effectiveness of private management of public educational programs, with at least one demonstration carried out in each of the ten Department of Education regions, and with funds used to support planning, start-up costs and evaluation; and"

On page 1000, line 11, strike "(R)" and insert: "(S)".

On page 1165, before Part G, insert the following new section:

"SEC. . PRIVATELY MANAGED SCHOOLS.

"Nothing in this Act shall be construed to deny States or local educational agencies the opportunity to use Federal funds to contract with private management firms."

SPECTER (AND PELL) AMENDMENT NO. 2420

Mr. SPECTER (for himself and Mr. PELL) proposed an amendment to the bill S. 1513, supra; as follows:

At the appropriate place, insert the following new section:

SEC. ___. GRANTS TO STATES FOR WORKPLACE AND COMMUNITY TRANSITION TRAINING FOR INCARCERATED YOUTH OFFENDERS.

(a) FINDINGS.—The Congress finds the following:

(1) Over 150,000 youth offenders age 20 and younger are incarcerated in the Nation's jails, juvenile facilities, and prisons.

(2) Most youth offenders who are incarcerated have been sentenced as first-time adult felons.

(3) Approximately 75 percent of youth offenders are high school dropouts who lack basic literacy and life skills, have little or no job experience, and lack marketable skills.

(4) The average incarcerated youth has attended school only through grade 10.

(5) Most of these youths can be diverted from a life of crime into productive citizenship with available educational, vocational, work skills, and related service programs.

(6) If not involved with educational programs while incarcerated, almost all of these youths will return to a life of crime upon release.

(7) The average length of sentence for a youth offender is about 3 years. Time spent in prison provides a unique opportunity for education and training.

(8) Even with quality education and training provided during incarceration, a period of intense supervision, support, and counseling is needed upon release to ensure effective reintegration of youth offenders into society.

(9) Research consistently shows that the vast majority of incarcerated youths will not return to the public schools to complete their education.

(10) There is a need for alternative educational opportunities during incarceration and after release.

(b) DEFINITION.—The term "youth offender" means a male or female offender under the age of 25, who is incarcerated in a State prison, including a prerelease facility.

(c) GRANT PROGRAM.—The Secretary shall establish a program in accordance with this section to provide grants to the States to assist and encourage incarcerated youths to acquire functional literacy, life, and job skills, through the pursuit of a postsecondary education certificate, or an associate of arts or bachelor's degree while in prison, and employment counseling and other related services which start during incarceration and continue through prerelease and while on parole.

(d) APPLICATION.—To be eligible for a grant under this section, a State agency shall submit to the Secretary a proposal for a youth offender program that—

(1) identifies the scope of the problem, including the number of incarcerated youths in need of postsecondary education and vocational training;

(2) lists the accredited public or private educational institution or institutions that will provide postsecondary educational services;

(3) lists the cooperating agencies, public and private, or businesses that will provide related services, such as counseling in the areas of career development, substance abuse, health, and parenting skills;

(4) describes the evaluation methods and performance measures that the State will employ, provided that such methods and measures are appropriate to meet the goals and objectives of the proposal, and that they include measures of—

(A) program completion;

(B) student academic and vocational skill attainment;

(C) success in job placement and retention; and

(D) recidivism;

(5) describes how the proposed programs are to be integrated with existing State correctional education programs (such as adult education, graduate education degree programs, and vocational training) and State industry programs;

(6) addresses the educational needs of youth offenders who are in alternative programs (such as boot camps); and

(7) describes how students will be selected so that only youth offenders eligible under subsection (f) will be enrolled in postsecondary programs.

(e) PROGRAM REQUIREMENTS.—Each State agency receiving a grant under this section shall—

(1) integrate activities carried out under the grant with the objectives and activities of the school-to-work programs of such State, including—

(A) work experience or apprenticeship programs;

(B) transitional worksite job training for vocational education students that is related to the occupational goals of such students and closely linked to classroom and laboratory instruction;

(C) placement services in occupations that the students are preparing to enter;

(D) employment-based learning programs; and

(E) programs that address State and local labor shortages;

(2) annually report to the Secretary and the Attorney General on the results of the evaluations conducted using the methods and performance measures contained in the proposal; and

(3) provide to each State not more than $1,500 annually for tuition, books, and essential materials, and not more than $300 annually for related services such as career development, substance abuse counseling, parenting skills training, and health education, for each eligible incarcerated youth.

(f) STUDENT ELIGIBILITY.—A youth offender shall be eligible for participation in a program receiving a grant under this section if the youth offender—

(1) is eligible to be released within 5 years (including a youth offender who is eligible for parole within such time); and

(2) is 21 years of age or younger.

(g) LENGTH OF PARTICIPATION.—A program receiving a grant under this section shall provide educational and related services to each participating youth offender for a period not to exceed 5 years, 1 year of which may be devoted to study in a graduate education degree program or to remedial education services for students who have obtained a high school diploma. Educational and related services shall start during the period of incarceration in prison or prerelease and may continue during the period of parole.

(h) EDUCATION DELIVERY SYSTEMS.—Correctional education agencies and cooperating institutions shall, to the extent practicable, use high-tech applications in developing programs to meet the requirements and goals of this program.

(1) ALLOCATION OF FUNDS.—From the amounts appropriated pursuant to subsection (j), the Secretary shall allot to each State an amount that bears the same relationship to such funds as the total number of eligible students in such State bears to the total number of eligible students in all States.

(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $18,000,000 for fiscal year 1995; and

(2) such sums as may be necessary for fiscal year 1996 and each fiscal year thereafter.

SPECTER AMENDMENT NO. 2421

Mr. SPECTER proposed an amendment to the bill S. 1513, supra; as follows:

On page 1,000, before line 13, insert the following:

(T) demonstrations that are designed to test whether prenatal education and counseling provided to pregnant students, emphasizing the importance of prenatal care; the value of sound diet and nutrition habits; and the harmful effects of smoking, alcohol and substance abuse on fetal development.

MOSELEY-BRAUN (AND KENNEDY) AMENDMENT NO. 2422

Ms. MOSELEY-BRAUN (for herself and Mr. KENNEDY) proposed an amendment to the bill S. 1513, supra; as follows:

On page 1357, after line 25, insert the following:

SEC. ___. HIGHER EDUCATION ACT OF 1965.

(a) SHORT TITLE.—This section may be cited as the "Equity in Athletics Disclosure Act".

(b) FINDINGS.—The Congress finds that—

(1) participation in athletic pursuits plays an important role in teaching young Americans how to work on teams, handle challenges and overcome obstacles;

(2) participation in athletic pursuits plays an important role in keeping the minds and bodies of young Americans healthy and physically fit;

(3) there is increasing concern among citizens, educators, and public officials regarding the athletic opportunities for young men and women at institutions of higher education;

(4) a recent study by the National Collegiate Athletic Association found that in Division I–A institutions, only 20 percent of the average athletic department operations budget of $1,310,000 is spent on women's athletics; 15 percent of the average recruiting budget of $318,402 is spent on recruiting female athletes; the average scholarship expenses for men is $1,300,000 and $505,246 for women; and an average of 143 grants are awarded to male athletes and 59 to women athletes;

(5) female college athletes receive less than 18 percent of the athletics recruiting dollar and less than 24 percent of the athletics operating dollar;

(6) male college athletes receive approximately $179,000,000 more per year in athletic scholarship grants than female college athletes;

(7) prospective students and prospective student athletes should be aware of the commitments of an institution to providing equitable athletic opportunities for its men and women students; and

(8) knowledge of an institution's expenditures for women's and men's athletic programs would help prospective students and prospective student athletes make informed judgments about the commitments of a given institution of higher education to providing equitable athletic benefits to its men and women students.

(c) AMENDMENT.—Section 485 of the Higher Education Act of 1965 (20 U.S.C. 1092) is amended by adding at the end the following new subsection:

"(g) DISCLOSURE OF ATHLETIC PROGRAM PARTICIPATION RATES AND FINANCIAL SUPPORT DATA.—

"(1) DATA REQUIRED.—Each institution of higher education that participates in any program under this title, and has an intercollegiate athletic program, shall annually submit a report to the Secretary that contains the following information:

"(A) For each men's team, women's team, and any team that includes both male and female athletes, the following data:

"(i) The total number of participants and their gender.

"(ii) The total athletic scholarship expenditures.

"(iii) A figure that represents the total athletic scholarship expenditures divided by the total number of participants.

"(iv) The total number of contests for the team.

"(v) The per capita operating expenses for the team.

"(vi) The per capita recruiting expenses for the team.

"(vii) The per capita personnel expenses for the team.

"(viii) Whether the head coach is male or female and whether the head coach is full time or part time.

"(ix) The number of assistant coaches that are male and the number of assistant coaches that are female and whether each particular coach is full time or part time.

"(x) The number of graduate assistant coaches that are male and the number of graduate assistant coaches that are female.

"(xi) The number of volunteer assistant coaches that are male and the number of volunteer assistant coaches that are female.

"(xii) The ratio of participants to coaches.

"(xiii) The average annual institutional compensation of the head coaches of men's sports teams, across all offered sports, and the average annual institutional compensation of the head coaches of women's sports teams, across all offered sports.

"(xiv) The average annual institutional compensation of each of the assistant coaches of men's sports teams, across all offered sports, and the average annual institutional compensation of the assistant coaches of women's sports teams, across all offered sports.

"(B) A statement of the following data:

"(i) The ratio of male participants to female participants in the entire athletic program.

"(ii) The ratio of male athletic scholarship expenses to female athletic scholarship expenses in the entire athletic program.

"(2) DISCLOSURE TO PROSPECTIVE STUDENTS.—An institution of higher education described in paragraph (1) that offers admission to a potential student shall provide to such student, upon request, the information contained in the report submitted by such institution to the Secretary under paragraph (1), and all students offered admission to such institution shall be informed of their right to request such information.

"(3) DISCLOSURE TO THE PUBLIC.—An institution of higher education described in paragraph (1) shall make available to the public, upon request, the information contained in the report submitted by such institution to the Secretary under paragraph (1).

"(4) SECRETARY'S DUTY TO PUBLISH A REPORT OF THE DATA.—On or before July 1, 1995, and each July 1 thereafter, the Secretary, using the reports submitted under this subsection, shall compile, publish, and submit to the appropriate committees of the Congress, a report that includes the information contained in such reports identified by (A) the individual institutions, and (B) by the athletic conferences recognized by the National Collegiate Athletic Association and the National Association of Intercollegiate Athletics.

"(5) DEFINITION.—For the purposes of this subsection, the term 'operating expenses' means all nonscholarship expenditures.".

(d) EFFECTIVE DATE.—The amendment made by subsection (c) shall take effect on July 1, 1994.

SIMON (AND OTHERS) AMENDMENT NO. 2423

Mr. SIMON (for himself, Mr. PELL, Mr. BYRD, Mr. CHAFEE, Mr. JEFFORDS, Ms. MOSELEY-BRAUN, and Mr. KOHL) proposed an amendment to the bill S. 1513, supra; as follows:

On page 1205, between lines 4 and 5, insert the following:

"PART D—LONGER SCHOOL YEAR

"SEC. 13401. SHORT TITLE.

"This part may be cited as the 'Longer School Year Incentive Act of 1994'.

"SEC. 13402. FINDINGS.

"The Congress finds as follows:

"(1) A competitive world economy requires that students in the United States receive education and training that is at least as rigorous and high-quality as the education and training received by students in competitor countries.

"(2) Despite our Nation's transformation from a farm-based economy to one based on manufacturing and services, the school year is still based on the summer needs of an agrarian economy.

"(3) For most students in the United States, the school year is 180 days long. In Japan students go to school 243 days per year, in Germany students go to school 240 days per year, in Austria students go to school 216 days per year, in Denmark students go to school 200 days per year, and in Switzerland students go to school 195 days per year.

"(4) In the final four years of schooling, students in schools in the United States spend a total of 1,460 hours on core academic subjects, less than half of the 3,528 hours so spent in Germany, the 3,280 hours so spent in France, and the 3,170 hours so spent in Japan.

"(5) American students' lack of formal schooling is not counterbalanced with more homework. The opposite is true, as half of all European students report spending at least two hours on homework per day, compared to only 29 percent of American students. Twenty-two percent of American students watch five or more hours of television per day, while less than eight percent of European students watch that much television.

"(6) More than half of teachers surveyed in the United States cite 'children who are left on their own after school' as a major problem.

"(7) Over the summer months, disadvantaged students not only fail to advance academically, but many forget much of what

such students had learned during the previous school year.

"(8) Funding constraints as well as the strong pull of tradition have made extending the school year difficult for most States and school districts.

"(9) Experiments with extended and multitrack school years have been associated with both increased learning and more efficient use of school facilities.

"SEC. 13403. PURPOSE.

"It is the purpose of this part to allow the Secretary to provide financial incentives and assistance to States or local educational agencies to enable such States or agencies to substantially increase the amount of time that students spend participating in quality academic programs, and to promote flexibility in school scheduling.

"SEC. 13404. PROGRAM AUTHORIZED.

"The Secretary is authorized to award grants to States or local educational agencies to enable such States or agencies to support public school improvement efforts that include the expansion of time devoted to core academic subjects and the extension of the school year to not less than 210 days.

"SEC. 13405. APPLICATION.

"Any State or local educational agency desiring assistance under this part shall submit to the Secretary an application at such time, in such manner, and accompanied by such information as the Secretary may require.

"SEC. 13406. FUND ALLOCATION.

"(a) FUNDING.—Of the funds appropriated pursuant to the authority of section 13501 for each fiscal year, the Secretary may reserve not more than 50 percent of such funds for such year to carry out this part.

"(b) AVAILABILITY.—Funds made available under subsection (a) for any fiscal year shall remain available until expended.

On page 1193, line 21, insert "and not used to carry out part D for such year" after "year".

On page 1194, line 2, insert "(other than part D)" after "title".

On page 1195, line 17, insert "(other than part D)" after "title".

On page 1195, line 25, insert "(other than part D)" after "title".

On page 1198, line 4, insert "(other than part D)" after "title".

On page 1198, line 7, insert "(other than part D)" after "title".

On page 1198, line 13, insert "(other than part D)" after "title".

On page 1198, line 20, insert "(other than part D)" after "title".

On page 1198, line 24, insert "(other than part D)" after "title".

On page 1199, line 3, insert "(other than part D)" after "title".

On page 1199, line 16, insert "(other than part D)" after "title".

On page 1199, line 18, insert "(other than part D)" after "title".

On page 1199, line 23, insert "(other than part D)" after "title".

On page 1200, line 1, insert "(other than part D)" after "title".

On page 1200, line 15, insert "(other than part D)" after "title".

On page 1200, line 24, insert "(other than part D)" after "title".

On page 1201, line 5, insert "(other than part D)" after "title".

On page 1202, line 20, insert "(other than part D)" after "title".

On page 1202, line 22, insert "(other than part D)" after "title".

On page 1203, line 6, insert "(other than part D)" after "title".

On page 1203, line 18, insert "(other than part D)" after "title".

On page 1204, line 2, insert "(other than part D)" after "title".

On page 1204, line 4, insert "(other than part D)" after "title".

On page 1204, line 10, insert "(other than part D)" after "title".

On page 1204, line 18, insert "(other than part D)" after "title".

On page 1204, line 22, insert "(other than part D)" after "title".

On page 1205, line 5, strike "**D**" and insert "**E**".

On page 1205, line 6, strike "**13401**" and insert "**13501**".

SIMON (AND OTHERS) AMENDMENT NO. 2424

Mr. SIMON (for himself, Mr. HATCH, Mr. KENNEDY, Mr. PELL, Mr. HARKIN, Ms. MIKULSKI, Ms. MOSELEY-BRAUN, Mr. CAMPBELL, Mr. BINGAMAN, Mr. LEAHY, Mr. METZENBAUM, Mrs. BOXER, and Mrs. MURRAY) proposed an amendment to the bill S. 1513, supra; as follows:

On page 995, line 10, strike "$2,000,000" and insert "$5 million."

JEFFORDS AMENDMENT NO. 2425

Mr. JEFFORDS proposed an amendment to the bill S. 1513, supra; as follows:

At the end of title IV, insert the following:

SEC. . LOCAL CONTROL OVER VIOLENCE.

(a) AMENDMENTS.—

(1) IN GENERAL.—In paragraph (3) of section 615(e) of the Individuals with Disabilities Education Act (20 U.S.C. 1415(e)(3)) is amended—

(A) by striking 'During' and inserting '(A) Except as provided in subparagraph (B), during'; and

(B) by adding at the end the following new subparagraph:

"(B)(i) Except as provided in clause (iii), if the proceedings conducted pursuant to this section involve a child with a disability who is determined to have brought a weapon to school under the jurisdiction of such agency, then the child may be placed in an interim alternative educational setting for not more than 90 days, consistent with State law.

"(ii) The interim alternative educational setting described in clause (i) shall be decided by the individuals described in section 602(a)(20).

"(iii) If a parent or guardian of a child described in clause (i) requests a due process hearing pursuant to paragraph (2) of subsection (b), then the child shall remain in the alternative educational setting described in such clause during the pendency of any proceedings conducted pursuant to this section, unless the parents and the local educational agency agree otherwise.".

(2) EFFECTIVE DATE.—Paragraph (1) and the amendments made by paragraph (1) shall be effective during the period beginning on the date of enactment of this Act and ending on the date of enactment of an Act (enacted after the date of the enactment of this Act) that reauthorizes the Individuals with Disabilities Education Act.

(b) CONSTRUCTION.—Nothing in title XVII of the Elementary and Secondary Education Act of 1965 (relating to Gun-Free Schools) shall be construed to supersede the Individuals with Disabilities Education Act or to prevent a local education agency that has expelled a student from such student's regular school setting from providing educational services to such student in an alternative setting, as provided by State law, policy, or otherwise determined by such local educational agency.

BYRD (AND DODD) AMENDMENT NO. 2426

Mr. BYRD (for himself and Mr. DODD) proposed an amendment to the bill S. 1513, supra; as follows:

On page 874, line 9, strike "The Secretary" and insert "(1) BIENNIAL EVALUATION.—The Secretary", and indent appropriately.

On page 874, line 14, insert after "subpart" the following: "and of other recent and new initiatives to combat violence in schools".

On page 874, between lines 16 and 17, insert the following:

"(2) DATA COLLECTION.—

"(A) COLLECTION.—The Secretary shall collect data to determine the frequency, seriousness, and incidence of violence in elementary and secondary schools in the States. The Secretary shall collect the data using, wherever appropriate, data submitted by the States-pursuant to subsection (b)(2)(B).

"(B) REPORT.—Not later than January 1, 1998, the Secretary shall submit to the Congress a report on the data collected under this subsection, together with such recommendations as the Secretary determines appropriate, including estimated costs for implementing any recommendation.

BYRD AMENDMENT NO. 2427

Mr. BYRD proposed an amendment to the bill S. 1513, supra; as follows:

On page 1165, between lines 21 and 22, insert the following:

"SEC. 10607. POLICY REGARDING CRIMINAL JUSTICE SYSTEM REFERRAL.

"(a) IN GENERAL.—No funds shall be made available under this Act to any local educational agency unless such agency has a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school served by such agency.

"(b) DEFINITIONS.—For the purpose of this section, the terms 'firearm' and 'school' have the same meaning given to such terms by section 921(a) of title 18, United States Code.

BUMPERS (AND OTHERS) AMENDMENT NO. 2428

Mr. BUMPERS (for himself, Mr. COCHRAN, Mr. KEMPTHORNE, Mr. PRYOR, Mr. WALLOP, Mr. SHELBY, Mr. CRAIG, Mr. GRAMM, Mr. LOTT, Mr. BINGAMAN, Mr. BURNS, Mr. THURMOND, and Mrs. HUTCHISON) proposed an amendment to the bill S. 1513, supra; as follows:

On page 553, line 10, strike "(i)".

On page 553, line 15, beginning with "effort factor" strike all through the period on page 553, line 17, and insert "relative income per child factor described in subparagraph (B).".

On page 554, beginning with line 4, strike all through page 556, line 15.

On page 556, line 23, strike "product of the effort" and insert "income per school-age child".

On page 556, beginning with line 24, strike "under" and all that follows through "year" on page 557, line 2.

On page 557, between lines 9 and 10, insert the following:

"(C)(i) Except as provided in subparagraph (D), the relative income per child factor shall be determined in accordance with the following formula:

$$R = 1.0 - 0.4\left(\frac{c}{n}\right)$$

"(ii) For the purpose of the formula described in clause (i), the term 'c' shall be a fraction, the numerator of which is the 3-year average of total personal income as reported by the Bureau of Economic Analysis for a county, and the denominator of which is the amount determined under the second sentence of subparagraph (A) for the county multiplied by the number of children aged 5 through 17 in the county.

"(iii) For the purpose of the formula described in clause (i), the term 'n' shall be a fraction, the numerator of which is the sum of the 3-year averages of total personal income as reported by the Bureau of Economic Analysis for all counties in all States, and the denominator of which is the sum of the products of the amount determined under the second sentence of subparagraph (A) for each county in each State multiplied by the number of children aged 5 through 17 in such county.

"(iv) For the purpose of the formula described in clause (i), the term 'R' shall be not more than 0.8 and not less than 0.2.

"(D) The relative income per child factor for the Commonwealth of Puerto Rico shall be 0.6.

"(E) The Secretary shall use the most recent data available to the Secretary to calculate relative income per child factors under this paragraph.

HATCH (AND BENNETT) AMENDMENT NO. 2429

Mr. HATCH (for himself and Mr. BENNETT) proposed an amendment to the bill S. 1513, supra; as follows:

Beginning on page 554 line 21, strike all through line 15 on page 556 and insert in lieu thereof the following:

(iii)(I) Except as provided in subclause (II) the equalization factor for a local educational agency shall be determined in accordance with the succeeding sentence. The equalization factor determined under this sentence shall be calculated as follows: First, calculate the difference (expressed as a positive amount) between the average per pupil expenditure in the State served by the local educational agency and the average per pupil expenditure in each local educational agency in the State and multiply such difference by the total student enrollment for such agency, except that children from low income families shall be multiplied by a factor of 1.4 to calculate such enrollment. Second, add the products under the preceding sentence for each local educational agency in such State and divide such sum by the total student enrollment of such State, except that children from low income families shall be multiplied by a factor of 1.4 to calculate such enrollment. Third, divide the quotient under the preceding sentence by the average per pupil expenditure in such State. The equalization factor shall be equal to 1 minus the amount determined in the previous sentence.

(II) The equalization factor for a local educational agency serving a State that meets the disparity standard described in section 222.63 of title 34, Code of Federal Regulations (as such section was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) shall have a maximum coefficient of variation of .10.

NOTICE OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BUMPERS. Mr. President, I would like to announce that the Subcommittee on Public Lands, National Parks and Forests will consider an additional measure at its hearing scheduled for August 4, 1994, beginning at 9:30 a.m.

The additional measure is S. 2249, a bill to amend the Alaska Native Claims Settlement Act, and for other purposes.

Bacause of the limited time available for the hearing, witnesses may testify by invitation only. However, anyone wishing to submit a written statement is welcome to do so by sending two copies to the Committee on Energy and Natural Resources, 304 Dirksen Senate Office Building, Washington, DC 20510.

For further information regarding the hearing, please contact Kira Finkler of the Subcommittee staff at 202–224–7933.

COMMITTEE ON SMALL BUSINESS

Mr. BUMPERS. Mr. President, I would like to announce that the Small Business Committee will hold a full committee markup of the Small Business Administration Reauthorization and Amendments Act of 1994. The markup will be held on Tuesday, August 2, 1994, at 10 a.m., in room 428A of the Russell Senate Office Building. For further information, please call Patricia Forbes, deputy staff director of the Small Business Committee at 224–5175.

SUBCOMMITTEE ON DOMESTIC AND FOREIGN MARKETING AND PRODUCT PROMOTION

Mr. LEAHY. Mr. President, the Committee on Agriculture, Nutrition and Forestry Subcommittee on Domestic and Foreign Marketing and Product Promotion will hold a hearing on proposed changes to the National Dairy Promotion and Research Board in S. 1557 and S. 1564. The hearing will also consider the beef industrywide long range plan of the Cattlemen's Beef Promotion and Research Board. The hearing will be held on Friday, August 5, 1994 at 10 a.m. in SR–332. Senator DAVID BOREN will preside.

For further information contact Brian Ellis at 224–4721 or Jeannine Kenney at 224–5323.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet at 9 a.m. on Thursday, July 28, 1994, in executive session, to discuss the proposed package offer to be made to the House on the DOD authorization bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Finance be permitted to meet today, July 28, 1994, at 10 a.m., to continue considering its recommendations for legislation to implement the Uruguay round of multilateral trade negotiations.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. FORD. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee for authority to meet on Thursday, July 28, at 9:30 a.m., for a hearing on civil agency financial audits.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to hold a business meeting during the session of the Senate on Thursday, July 28, 1994.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Thursday, July 28, 1994 at 2:00 p.m. to hold a hearing on Department of Justice oversight.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on Davis-Bacon reform, during the session of the Senate on July 28, 1994, at 10:30 am.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on "Sickle Cell Disease Research: An Update," during the session of the Senate on July 28, 1994, at 2:30 pm.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet on July 28, 1994, off the floor after the first vote, for an executive session to consider the nominations of Gilbert F. Casellas, Paul M. Igasaki, and Paul S. Miller, to be members of the Equal Employment Opportunity Commission, and Kenneth M. Jarin, to be a member of the National Council on the Arts.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON AGRICULTURAL RESEARCH, CONSERVATION, FORESTRY, AND GENERAL LEGISLATION

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry Subcommittee on Agricultural Research, Conservation, Forestry, and General Legislation be authorized to meet during the session of the Senate on Thursday, July 28, 1994 at 2:30 p.m. to hold a hearing on pesticide legislation pending before the committee—S. 985, S. 1478, and S. 2050.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands, National Parks, and Forests of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 9:30 a.m., July 28, 1994, to receive testimony on S. 2121, a bill to promote entrepreneurial management of the National Park Service, and for other purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

GERNIKA AND BOISE, SISTER CITIES

• Mr. KEMPTHORNE. Mr. President, this weekend, the mayor of Gernika, Spain, will lead the first official Basque delegation to visit Idaho's capital city since the establishment of a sister city relationship between Gernika and Boise. Last October, Boise Mayor Brent Coles sent a delegation, headed by Secretary of State Pete Cenarrusa, to the Basque country with an offer to host a delegation visit to Idaho in honor of this sister city relationship.

On December 19, 1992, just prior to joining the United States Senate, I had the honor as mayor of Boise to join with the Honorable Eduardo Vallejo de Olejua, mayor of Gernika, in proclaiming our sister city relationship and sanctifying the natural bond which exists between our two cities.

Boise boasts a rich Basque heritage, including the largest population of Basques outside of Spain; 90 percent of the Basque families living in Boise, which is home to the largest population of Basques outside of Spain, came from the area surrounding the city of Gernika.

The city of Gernika is the sacred city of Basque democracy and has, for centuries, stood as a beacon to all freedom loving peoples of the world. Likewise, Boise has always stood for individualism, democracy, and freedom.

Over the years, there have been numerous exchanges and frequent trips between Gernika and Boise based upon our shared populations and close family ties. In Boise, we enjoy the richness of the Basque culture and the joy of their spirit as evidenced by the Oinkari Dancers, the Basque Museum and Cultural Center, Jaialdi, Onati Restaurant and the Bar Gernika. Boise is known as the 8th Province of the Basque Country.

Gernika, the city of the Tree of Gernika, and Boise, the City of Trees, share a common culture and a common love of democracy and freedom.

Mr. President, as this historic meeting occurs in Boise this weekend, I'm sure my colleagues in the U.S. Senate would wish to join me in recognizing this significant visit by the mayor of Gernika and his accompanying delegation. At the same time, I'd also like to acknowledge the longstanding tradition of good will between these two communities that we are seeing strengthened by this sister city relationship.•

PROJECT FIRST

• Mr. SIMON. Mr. President, I have long been concerned about intolerance in our society. The diversity of our culture is one of our greatest strengths, but unfortunately we have found that with diversity often comes intolerance. But that does not need to be the case. In Illinois, one high school is proving that tolerance can be taught.

University High School at Illinois State University, has been conducting an experiment designed to teach high school students to work with each other and to make their diversity a source of strength instead of conflict. Project FIRST [Freshmen Initiative Restructuring Schools Together] uses cooperative learning, integrated classrooms and team teaching techniques to teach students to work with people of different backgrounds toward a common goal. It also uses literature to introduce students to the topic of tolerance, and invites students to relate what they read to their own lives. According to a recent study of students and teachers, the results of this experiment have been good. Freshman attendance has been up, and student participants report that the project brings them closer together and allows them to know more about their similarities and differences.

Project FIRST is an example of the kinds of innovative educational programs that we should be encouraging across the country. It not only motivates students in their studies but also introduces the issue of tolerance into the classroom, where important progress can be made.•

A TRIBUTE TO SETON HALL UNIVERSITY SCHOOL OF LAW

• Mr. LAUTENBERG. Mr. President, I rise today to call the Senate's attention to several recent events at New Jersey's Seton Hall University school of law. After just four decades of operation, the school has clearly become one of the rising stars among this Nation's law schools.

The road to success has not, however, been easy. Just a few years ago, Seton Hall University was seriously considering moving the school from its location in downtown Newark. After serious discussion and debate, the university decided that its future was tied to the city's and the decision was made to build a new, state-of-the-art law center facility in Newark.

That was the right decision. In a recent study of 18,000 law students at 165 accredited law schools conducted by the National Jurist, an independent monthly magazine, and the Princeton Review, Seton Hall University school of law ranked second in overall student satisfaction.

Seton Hall also ranked second in terms of student satisfaction with the law center facilities themselves, and third in student satisfaction with the law library, computerized equipment, and other research facilities.

These rankings far exceed those attained by some of the most established and prestigious law schools in the county.

As Dean Ronald Riccio said of the results of the survey, "I have always felt that the best judge of the quality of any law school is the students. They know what a good program is."

As important as student satisfaction is, we all recognize that it is not the only measure of a school's success. Another is the quality of the work produced by those students. In that regard, according to a recent survey conducted by the University of Miami, the Seton Hall Law Review ranked, along with the law reviews published by Yale and the University of Virginia, as the fifth most cited law journal in the country in terms of opinions written by judges from the 13 Federal circuit courts of appeal.

Another indication of the school's success is the fact that, in 1995, the Oliver Wendell Holmes Lecture—a prestigious event which law schools throughout the country compete to host—will take place at Seton Hall.

Finally, in another first for Seton Hall, the school's Black Law Students Association's moot court team defeated the team from Georgetown Law Center to win the Frederick Douglass National Moot Court Competition.

Mr. President, we in New Jersey have long been extremely proud of the accomplishments of this school, its students and its alumni. It is very gratifying to see that Seton Hall University School of Law is now attaining the kind of national recognition it deserves.•

WORLD WITHOUT POWER

• Mr. SIMON. Mr. President, Anthony Lewis had a column in the New York Times recently commenting on something I have talked about briefly on the floor of the Senate from time to time, that I have never seen another journalist write about.

We have a reluctance to face up to the problems of risk-taking in the Armed Forces as we try to provide a more stable and secure world. It is an easy thing on which to duck politically.

The reality is, you do not volunteer for the Chicago Police Department without recognizing that you are taking a risk. And if there is a fatality, as there occasionally is, no one says that since someone on the Chicago police force has been shot in dealing with a gang problem in one section of the city, we should take the police out of that section of the city. We recognize the essential role, as well as the dangerous role, that people on the Chicago police force assume.

Those who volunteer for the Armed Forces of the United States play a somewhat similar role on the international scene.

Anthony Lewis says: "The United States is the one remaining superpower. If it cannot use force to prevent disasters, then the world is truly condemned to chaos."

I could not agree with him more.

I missed reading the article that he refers to by Edward Luttwak, but I plan to read it.

In the meantime, my colleagues should read the Anthony Lewis column if they have not.

Mr. President, I ask to insert the column into the RECORD at this point.

The column follows:

WORLD WITHOUT POWER

(By Anthony Lewis)

Rwanda is many things: a human catastrophe, a testament to the danger of ethnic hatred, a devastating symbol of man's inhumanity to man. But beyond all that it is a sign of the New World Disorder: a world in which no great power takes responsibility for preventing a descent into chaos.

When an organized group of militant Hutus began slaughtering Rwanda's Tutsi minority in April, no outside power was prepared to intervene. Pleas by the Secretary General of the United Nations, Boutros Boutros-Ghali, got no response.

In the end the human tragedy was so great that the United States Government has felt compelled to mount an enormous relief effort. It will cost many times what earlier intervention might have, not to mention the cost in Rwanda lives.

There were reasons for the Clinton Administration's disinclination to intervene in April or May. Rwanda is remote from American military bases and outside traditional areas of American interest. Separating the parties in so savage a civil conflict would have been difficult.

But there was plainly another element in the American decision to stay out. That was the now ingrained reluctance to use the armed forces of the United States in any situation where they may suffer casualties.

Edward N. Luttwak, a conservative analyst at the Center for Strategic and International Studies in Washington, discusses the new military shyness in the current issue of Foreign Affairs. His article, brief and pungent, is essential reading for both liberals and conservatives.

In Somalia, Mr. Luttwak notes, the death of 18 professional soldiers—who presumably went into the military knowing that they might have to risk their lives—forced a total change in U.S. policy. In Haiti, a handful of thugs on the docks frightened off an American vessel; the impression of U.S. weakness bedevils the Haitian problem to this day.

What we are seeing, Mr. Luttwak argues, is a "refusal to tolerate combat casualties." And the phenomenon is not confined to the United States or other democracies where television images may drive public opinion. The old, totalitarian Soviet Union invaded Afghanistan but then acted with extraordinary timidity—for fear of public reaction against casualties.

The two recent cases where significant powers risked sizable casualties were the Falklands war and the Persian Gulf war. In the first, Margaret Thatcher's leadership took Britain into a romanticized echo of empire. In the gulf there were real interests, and President Bush effectively mobilized opinion behind the war.

But the gulf war story suggests that we are now willing to risk casualties only for a large and dramatized cause. And that, Mr. Luttwak says, "rules out the most efficient use of force—early and on a small scale to prevent escalation." He might have been writing presciently, about Rwanda.

What is the reason for the new sensitivity about possible casualties? Mr. Luttwak's theory is that it reflects the smaller size of families in the developed world. In earlier centuries people had many children, some of whom were expected to die young anyway, so death in battle was more acceptable.

That may be a psychological explanation. But there is a more immediate political one in this country: Vietnam. We fought a war that more and more Americans came to regard as a mistake, costing thousands of lives even after we decided to get out.

Since Vietnam the Pentagon has been hypersensitive about public opinion. Under Gen. Colin Powell as Chairman of the Joint Chiefs, it adopted a doctrine that allows the use of American forces in only extremely narrow circumstances. Military leaders have become the biggest resisters in the use of force.

Those of us who came to oppose the Vietnam war naturally applaud the cautiousness of military leaders. But like any doctrine, this one can be overdone. Right now, for example, Zairean officers are demanding payments to let relief planes for Rwanda refugees land. The United States should use its muscle without hesitation to stop such a practice by the corrupt forces of President Mobutu Sese Seko.

The United States is the one remaining superpower. If it cannot use force to prevent disasters, then the world is truly condemned to chaos. And Americans, Edward Luttwak writes, will have to learn how to be blind—"to passively ignore avoidable tragedies and horrific atrocities."•

IN RECOGNITION OF THE RETIREMENT OF MICHAEL I. HANDLEY

• Mr. RIEGLE. Mr. President, I rise today to recognize the outstanding career of Michael I. Handley, who is now retiring after four decades of service to the Communications Workers of America.

Born in Alcoa, TN, on March 19, 1925, Mr. Handley volunteered for the Navy during World War II. After the war, he worked for several years with the Southern Bell telephone company.

Michael Handley began his union career in the early 1950's. By 1958, he had become president of the Knoxville, TN, Communications Workers of America [CWA] Local 3805.

Mr. Handley has been my constituent, off and on, over the past 30 years. He first came to Michigan in 1967 as a District 4 representative for the CWA, a position he held for 5 years. Then in 1972, Mr. Handley moved to Georgia to serve as south Georgia director of the CWA. Two years later, he became assistant vice-president for CWA's District 3, and he remained there for 4 more years. Finally, in 1978, Mr. Handley and his family returned to the Michigan-Ohio area, working for CWA District 4, 2 years later he was appointed director of the Michigan CWA, and in 1982 he was named assistant vice-president for District 4, which includes Ohio, Indiana, Illinois, Wisconsin, and Michigan.

In addition to his work for the Communications Workers of America, Michael Handley has served in numerous community service positions, and has dedicated his time and efforts toward making his community better. He is presently a board member of the Greater Detroit Area Hospital, the United Way of Michigan, and the Michigan State AFL–CIO Executive Board, and is an active member of the Detroit United Fund. In addition to all that, he is also a commissioner on the Michigan Air Pollution Control Board.

I know that I speak for many when I say that Mr. Handley, together with his wife Amy, has been a reliable and consistent force for progressive change in the American work force, and that his tireless efforts on behalf of working men and women will not be forgotten. On behalf of the people of Michigan, I wish Mr. Handley a long and prosperous retirement.•

BUDGET DEFICITS AND THE SOCIAL SECURITY ADMINISTRATION

• Mr. SIMON. Mr. President, Robert Myers recently published an article in the Valley News Dispatch that I recommend to each and every one of my colleagues.

Many of us know Robert Myers as a renowned expert on the Social Security Administration. He served as chief actuary of the Administration from 1947 to 1970, and as Deputy Commissioner in 1981 and 1982. From 1982 to 1983, he served as the Executive Director of the National Commission on Social Security Reform. He has been referred to in

this body as a "person of legendary integrity and authority."

Robert Myers' article discusses the future of the Social Security System. He concludes that "the most serious threat to Social Security is the Federal Government's fiscal irresponsibility." Here are his words:

If we continue to run deficits year after year, and if interest payments continue to rise at an alarming rate, we will face two dangerous possibilities. Either we will raid the Social Security trust funds to pay for our current profligacy, or we will print money, dishonestly inflating our way out of indebtedness * * *.

Mr. Myers prescription is straightforward: Enact the Balanced Budget Amendment. "Passing the balanced budget amendment," he states, "would protect current employees from paying more today and getting less tomorrow, when they'll need it most." These are wise words—words we ignore at our peril.

Mr. President, I ask that the entire text of Mr. Myers' article be printed in the RECORD.

The article follows:

[From the Valley News Dispatch]

BUDGET DEFICITS COULD THREATEN BENEFITS' VALUE

(By Robert Myers)

Franklin Delano Roosevelt's Social Security program is one of the great social policy successes of this century. Fifty-eight years after the program was voted into law, the Social Security trust funds not only are self-sustaining; they also have significant excesses of income over expenditures. As a result, the program's trust funds will continue to help millions of elderly, disabled and survivor beneficiaries for generations, so long as the rest of the federal government acts with fiscal prudence.

Unfortunately, that's a big "if."

The federal government's ambitions are virtually always more expansive than its bank balance. With the government running stubborn deficits year after year, fiscal hawks have begun eying Social Security's balance sheets—with an accumulated excess of $378 billion at the end of 1993—as a deep pocket into which the government could dip to make up its current horrendous budget deficits and national debt.

For a number of reasons, that would be a terrible mistake. It is also why I favor the balanced budget amendment. Such an amendment would prevent the federal government from spending more than it earns, and it would reduce the temptation to plunder Social Security to make up for shortfalls in other government programs.

Many people claim that if the balanced budget amendment were to be adopted and if the federal government could not meet its obligations, Social Security recipients would pay the difference through reduced benefits. This, indeed, could occur. However, on grounds of integrity, logic and fair play, I strongly doubt that Congress would take such an alarming step.

Cutting Social Security expenditures alone would not accomplish the goal of reducing the national debt; it would merely shift the burden from the general public to the Social Security trust funds, which are safely invested in interest-bearing government bonds. Also, cutting expenditures while continuing to tax Americans for benefits they would no longer receive, would be unfair.

If Social Security benefits are reduced, then Social Security taxes should be reduced as well. And if someone in Congress did propose reducing benefits—with or without a tax reduction—the political outcry would likely be deafening. Social Security currently guarantees the nation's 26 million retired workers, who otherwise would have to fend for themselves, an income of about $675 a month for life, plus cost of living adjustments in the future. That doesn't count the monthly benefit checks for spouses and children of retirees; for workers who are disabled; and for the surviving spouses and children of workers who have died.

All told, some 43 million Americans rely on Social Security for some part of their income. They comprise a constituency that no member of Congress could easily ignore.

The most serious threat of Social Security is the federal government's fiscal irresponsibility. If we continue to run deficits year after year, and if interest payments continue to rise at an alarming rate, we will face two dangerous possibilities. Either we will raid the Social Security trust funds to pay for our current profligacy, or we will print money, dishonestly inflating our way out of indebtedness. Both cases would sharply diminish the real value of the trust funds and, even more important, the real value of the benefits for million of beneficiaries.

Passing a balanced budget amendment would protect current employees from paying more today and getting less tomorrow, when they'll need it most.●

ORDER OF BUSINESS

Mr. FORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE DEATH OF THE HONORABLE HUGH SCOTT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 246, a resolution relating to the death of the Honorable Hugh Scott, formerly a Senator from the State of Pennsylvania, introduced today by the majority leader, the Republican leader, and others; that the resolution be agreed to and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the resolution (S. Res. 246) was agreed to, as follows:

S. RES. 246

Resolved, That the Senate has heard with profound sorrow and deep regret the announcement of the death of the Honorable Hugh Scott, formerly a Senator from the State of Pennsylvania.

Resolved, That the Secretary communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That when the Senate recesses today, it recess as a further mark of respect to the memory of the deceased Senator.

ORDERS FOR TOMORROW

Mr. FORD. Mr. President, on behalf of the majority leader, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 8:45 a.m., Friday, July 29; that following the prayer, the Journal of the proceedings be deemed approved to date and the time for the two leaders reserved for their use later in the day; that there then be a period for morning business not to extend beyond 9 a.m., with Senators permitted to speak therein for up to 5 minutes each, with Senator GRAMM of Texas recognized to speak for up to 10 minutes; that at 9 a.m., the Senate proceed into executive session to consider the nomination of Judge Breyer, as provided for under the provisions of a previous unanimous consent agreement.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 8:45 A.M. TOMORROW

Mr. FORD. Mr. President, if there is no further business to come before the Senate today, I now ask unanimous consent that the Senate stand in recess as provided for under S. Res. 246, as a mark of further respect for the late Honorable Hugh Scott.

There being no objection, the Senate, at 10:18 p.m., recessed until Friday, July 29, 1994, at 8:45 a.m.

NOMINATIONS

Executive nominations received by the Senate July 28, 1994:

THE JUDICIARY

DIANA E. MURPHY, OF MINNESOTA, TO BE U.S. CIRCUIT JUDGE FOR THE EIGHTH CIRCUIT, VICE JOHN R. GIBSON, RETIRED.

SHIRA A. SCHEINDLIN, OF NEW YORK, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK, VICE LOUIS J. FREEH, RESIGNED.

DOMINIC J. SQUATRITO, OF CONNECTICUT, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT, VICE, A NEW POSITION CREATED BY PUBLIC LAW 101-650, APPROVED DECEMBER 1, 1990.

IN THE ARMY

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be general

GEN. DAVID M. MADDOX, 150-32-5193

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. RICHARD F. TIMMONS, 231-56-0272

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be general

LT. GEN. WILLIAM W. CROUCH, 530-26-4224